

104
U.S. COMMISSION ON CIVIL RIGHTS

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U.S. Commission on Civil Rights, Se...

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

OCTOBER 19, 1995

Serial No. 56



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U.S. COMMISSION ON CIVIL RIGHTS

THURSDAY, OCTOBER 19, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room B-352, Rayburn House Office Building, Hon. Charles T. Canady (chairman of the subcommittee) presiding.

Present: Representatives Charles T. Canady, Henry J. Hyde, Bob Inglis, F. James Sensenbrenner, Jr., Lamar Smith, Bob Goodlatte, Barney Frank, Melvin L. Watt, and John Conyers, Jr.

Also present: Kathryn A. Hazeem, chief counsel; Jacqueline McKee, paralegal; and Robert Raben, minority counsel.

OPENING STATEMENT OF CHAIRMAN CANADY

Mr. CANADY. The subcommittee will come to order.

The U.S. Commission on Civil Rights was established by Congress in 1957 to serve as an independent, bipartisan, factfinding agency of the executive branch. The Commission's current authorization will expire on September 30, 1996. This morning the subcommittee will focus primarily on three areas of concern: the failure of the Commission to comply with the requirements of its authorizing statute that it submit to Congress at least one report each year that monitors Federal civil rights enforcement, the release of a report on funding civil rights enforcement in which three of the Commissioners were allegedly denied a proper opportunity to vote, and perhaps of greatest concern, the Commission's use of its subpoena authority in a manner that chilled the first amendment-protected activities of individuals in connection with its recent hearings in Miami, FL.

There is no question that the Commission has some serious problems. The last three reports issued by the Commission were approved by less than a majority of the Commissioners. The Commission has been without a permanent General Counsel to oversee its hearing preparation and other legal work for well over a year. Because of these problems, we need to consider whether the Commission needs serious restructuring.

Before we begin, however, there is an important matter that I must address. I have made repeated requests for documentation in connection with the preparation of the Commission for its Miami, FL, hearing, the subject of this morning's oversight hearing, which the Commission Staff Director has refused to produce. I have asked for, but not received, a written explanation of the legal grounds for

such refusal, including specific citations to the relevant legal authorities supporting that position. In response the Staff Director has simply argued that, somehow, congressional oversight would impair the independence of the hearing process, necessary for the Commission's factfinding process.

In addition, just 2 days ago, I was informed that the Staff Director had decided not to make Commission attorney advisors Sicilia Chinn and Lillian Moyano Yob available to answer questions this morning. These individuals were first invited to testify on September 20, 1995, almost 1 month ago. I'm deeply troubled that these two individuals, who played a key role in the activities the subcommittee is investigating, will not be available for questioning.

Congress has a broad and encompassing power to engage in oversight and investigation that reaches all sources of information that enable it to carry out its legislative function. Where there is no countervailing constitutional privilege, congressional committees have the power to compel information needed to discharge legislative functions from executive agencies. The Commission, like every other independent agency, is a creature of statute. This subcommittee has the responsibility and the authority to determine whether or not the Commission is gathering facts in accord with the Commission's authorizing statute, and whether that statute needs to be modified. We also have a duty to ensure that the Commission's factfinding process is conducted in accordance with the law and the Constitution.

Congress created the U.S. Commission on Civil Rights. Congress authorizes the Commission. Congress funds the Commission. Congress appoints Commissioners to the Commission. The Commission issues its reports for the benefit of Congress. The policy argument advanced by the Commission that it would be impossible for the Commission to pursue an inquiry, and to reach unbiased conclusions, if the Congress or the President oversaw the production of facts, clearly does not provide sufficient legal grounds to justify the refusal to provide information and failure to make witnesses available whose testimony is vital to the subcommittee's oversight responsibilities.

I am hopeful still that this matter will be resolved by the time the subcommittee holds its hearing on the general plans, accomplishments, and activities of the Commission, which we will be holding at a later date. The subcommittee has a duty to make certain that the Commission is properly administering the responsibilities given to it by Congress. The Commission has refused to provide simple information to the subcommittee, such as a list of names of Commission staff responsible for the planning of the Miami hearings, setting forth their areas of responsibility. As I have reviewed the law, the Commission has no credible legal basis for withholding this information. Congress creates, authorizes, and funds the Commission so that it can collect information and report to the Congress. The Commission is making a rather incredible argument that we are not entitled to examine how that process is carried out. Once again, I intend to ask the Commission what is the legal basis for the withholding of information from this subcommittee.

With that, I'll recognize Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman.

First, I want to express my concern over the subject matter of the hearings that this subcommittee has had. This is a subcommittee hearing in a series in which we have, at your direction, focused on what you believe to be shortcomings that arise from our efforts to fight discrimination; I should go beyond that—excesses.

We have had hearings which have been critical of the institutions or policies that have been set forth to deal with race discrimination, for example. And without question, there are abuses. I think the Civil Rights Commission was mistaken to ask for people's political information here, but I also think we are deficient in our responsibility if we simply critique the various efforts to deal with the problem of race and never look at that problem itself. And we have not had one hearing, to my knowledge, to my recollection, in which we looked at the underlying problem: Is there still a problem of discrimination?

I don't think that many people would say that racism has left our society as a problem. We've made, I think, enormous progress in dealing with it, but none of our hearings have focused on how we can deal with the remaining problems caused by racism. Our hearings have all been to criticize those who are trying to deal with the problem. And they should not be immune from criticism; they should be criticized some. But to focus only on defects in the remedies, and never on the underlying problem, seems to me to be a mistake.

And there's one other area that I'd like to call attention to: on September 7, just after reconvening from the recess in August, we had a hearing on very important legislation, legislation that is in the jurisdiction of this subcommittee, that would tighten up in a way that's badly needed the laws on lobbying. We have a serious problem with lobbying laws and regulations that are a joke. And at that hearing, a very broad consensus emerged among the members of the subcommittee—it was a very well attended hearing—and among the witnesses, that we should move forward on the Senate bill.

This subcommittee has jurisdiction. It is now a month and a half since that hearing, and we haven't done a thing. And the legislative session draws to a close. And I think that's a serious mistake. I urge you, Mr. Chairman, to use your authority as chairman of the subcommittee to call a markup on that. I would hope that it would be a markup in which we would simply pass the Senate bill. We don't have full jurisdiction over this, the gift ban is in other subcommittees, but I think we would encourage them by our example. So I would hope that you would very soon call a markup—I think it would be about a 20-minute markup at most—in which we could get that bill out, but this subcommittee's inaction is contributing to concerns people have that we're not going to get anywhere on the bill, and having had the hearing and having the bill before us, I see no reason why we don't move on the lobbying bill.

Mr. CANADY. Let me respond to the second point that Mr. Frank made concerning the lobbying bill, which really isn't the subject of this hearing, but since Mr. Frank has brought it up, I'll respond. I share the frustration of many people that the issue has not moved forward. It is still my hope, and my belief, that the Senate-

passed bill will be taken up by the House. And I believe that there's a good chance that it's going to happen this year. I don't believe that it's going to be necessary for us to have a markup. However, if that scenario does not develop in that way, then I am committed to doing whatever I can to move forward with that issue. I do believe that the most expeditious way for us to deal with this at this time is for the Senate bill to be taken up. And, quite frankly, the Senate bill has not been referred to this committee; it is being held up at the desk.

Mr. FRANK. Mr. Chairman, might I respond?

Mr. CANADY. Yes.

Mr. FRANK. First, I'm sorry the Speaker hasn't referred the Senate bill to us, and maybe you and the chairman can ask the Speaker to take his chokehold off that, but I have to disagree with you that the most expeditious thing to do is for us to do is for us to sit and wait and pray and hope. If I were chairman of this subcommittee, and I've been chairman of a subcommittee in the past, and when I thought a bill had to be moved, and it was in the jurisdiction of my subcommittee, I called a markup and moved it. And I agree with you, the best thing to do would be to pass the Senate bill. We could have a markup, take up the House bill, you could move to substitute the Senate bill, we could pass the Senate bill, and we could send the Senate bill on its way to full committee. And that would give it some initiative.

So I think that other than passive cheering on, there is something we can do. And we are, unfortunately, part of this failure to act.

Mr. CANADY. Well, let me say, there's been more than passive cheering on; there's been an active effort to move forward with the issue, and I believe that we're going to succeed in that.

And let me also address the other points you made concerning the activities of this subcommittee. This subcommittee has held a number of hearings. I understand that you may not agree with the subject of the issues that we've been considering, but we have looked at the issue of the impact of preferential policies. And many people believe that those policies are encouraging racial division in the country, that those policies are reinforcing racism in America. I share that view, and I understand that you don't share that view, and your viewpoint is a legitimate perspective. But to say that we're not engaged in the issue I think is unfortunate.

And, furthermore, the purpose of this hearing is not simply to criticize the Civil Rights Commission, but to help ensure that the Civil Rights Commission can carry out its responsibilities in an effective manner. The Civil Rights Commission will be reporting to the Congress, as required by the law, and otherwise fulfilling its duties. And we're trying to do that, and I am hopeful that, as a consequence of this hearing and others, that that will be the result.

Mr. FRANK. Mr. Chairman, may I respond to that?

Mr. CANADY. Well—

Mr. FRANK. Well, Mr. Chairman, I don't understand the rules to be that you get to make an opening statement, I get to make a shorter opening statement, and then you get to respond to my opening statement, and I can't respond. I don't think that's the

rules at all. So if you're going to respond, if we're going to have that, then it seems to me I'm entitled to the same kind of response.

Mr. CANADY. Go ahead.

Mr. FRANK. You have reiterated for me the point that I'm making. You are talking about whether affirmative action, an effort to remedy the problems of racism, has exacerbated it. But there has been no hearing called by this committee on the problems of racism and what it causes. There has been no hearing by this subcommittee, which has jurisdiction over it, to talk about whether or not members of racial minorities, blacks, Hispanics, are in fact suffering any kind of ill treatment as a result of racial feeling and what we can do about it.

All of the hearings that have dealt with the subject of race have been critiques of the effort to deal with racism and those critiques are perfectly valid. But when that's all we get, and no focus on the underlying problem that gave rise to an affirmative action policy or a Civil Rights Commission, I think we get a real bias.

Mr. CANADY. Mr. Hyde.

Mr. HYDE. I have no statement.

Mr. CANADY. Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, the only thing I would say about that is the hearings that we've held on a number of issues, including the affirmative action issue and racial preferences and quotas, does get to the underlying issue. It gets to the issue of whether or not the problems described have been addressed by that policy and it gets to the issue of whether or not those policies are, in fact, in some instance counterproductive.

As to the broader issue of civil rights, this hearing today is a hearing on civil rights. We have allegations that the U.S. Civil Rights Commission, the entity responsible for investigating and reporting to the President, to the public, to the Congress, on civil rights may have, indeed, denied civil rights to U.S. citizens with overbroad subpoena powers, may have, indeed, denied civil rights to its own members. The agency responsible for overseeing the voting rights issue is alleged to have denied some of its own members the right to vote properly on a report of the Commission.

So this is a hearing on civil rights, and I don't think we should in any way minimize the fact that every member of this committee is going to have the opportunity to direct their focus, as we did with previous hearings, on their point of view regarding how civil rights is proceeding in this country. And I think we should continue to do that.

I yield back.

Mr. CANADY. Thank you, Mr. Goodlatte.

Mr. Smith has asked that his opening statement be included in the record. Without objection, it will be included.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF HON. LAMAR SMITH, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF TEXAS

I would like to thank my friend from Florida, the Chairman of the Subcommittee, for calling this morning's hearing. Briefly, I have three concerns.

First, in reviewing the authorizing statute of the Civil Rights Commission it is clear that Congress has not given the Commission authority to investigate immigration issues. There is nothing in the statute regarding immigration. Of course it is

possible to argue that because the Commission can study and collect information on discrimination based on "national origin" they can get involved in immigration issues.

To make that argument, you must assume that citizens who raise honest concerns about America's policies regarding legal and illegal immigration—an issue that concerns most members of this Committee and this Congress—are somehow discriminating based on "national origin." While it is possible to make such an argument, I do not believe that the argument has any legal basis.

Second, and perhaps more importantly, Congress has created a Commission to report on immigration issues—the United States Commission on Immigration Reform, chaired by former Congresswoman Barbara Jordan. The Jordan Immigration Commission, like the Civil Rights Commission, is a bipartisan, independent, fact-finding body whose purpose is to issue reports that make policy recommendations to Congress.

The Jordan Immigration Commission recently issued a report on reform of our nation's legal immigration system on which there was almost unanimous agreement by the nine Commissioners. The Jordan Immigration Commission has been praised for the thoughtfulness and thoroughness of its efforts, and its reports have created a framework for immigration reform legislation which is currently being considered by the full Judiciary Committee.

One significant difference between the Civil Rights Commission and the Jordan Immigration Commission—besides the fact that one Commission is clearly authorized to examine immigration issues and the other is not—is that the Jordan Immigration Commission has no subpoena authority. We should carefully examine why it is that the Jordan Immigration Commission is able to do an excellent job on a sensitive subject without subpoena authority.

Third, and of greatest concern, is that individuals who come together in voluntary, private associations, not accused of breaking any law, but simply trying to express an opinion on public policy matters should find themselves threatened with a subpoena and compelled to produce their organization's internal documents by an agency of the Federal Government that is supposed to protect civil rights. The argument of the Civil Rights Commission that they subpoena all their witnesses really misses the point.

It seems that the Civil Rights Commission's subpoena authority, rather than enhancing its ability to engage in fact-finding, may be hampering its ability to accomplish the mandate of its statute. Therefore I strongly disagree with the claim that the Civil Rights Commission cannot perform its statutory mission without the power to summon the attendance of witnesses and the submission of documents. The work of the Jordan Immigration Commission clearly refutes that argument.

This Subcommittee should consider the Jordan Immigration Commission as a model for how an independent fact-finding Commission can comply with its mandate and serve the needs of the Congress and the President without chilling or violating constitutional rights. Again, thank you, Mr. Chairman, for holding this very important hearing.

Mr. CANADY. On our first panel of witnesses today, we will hear from four distinguished colleagues. Congressman Mark Foley is serving his first term and represents West Palm Beach, FL. His constituents contacted him after some disturbing communications with staff on the Civil Rights Commission.

After Congressman Foley, we will hear from Congressman Louise Slaughter, from New York's 28th District. Ms. Slaughter is currently serving her fifth term in the House.

Congressman Clay Shaw is a Member from Florida, like myself and Mr. Foley, and has served the 22d District of Florida since 1981. He is a former member of the Judiciary Committee. Welcome back, Mr. Shaw.

Finally, we will hear from Congressman Dana Rohrabacher. Congressman Rohrabacher is currently serving his fourth term and represents the 45th District of California.

I want to thank each of you for being here. We would ask that you each confine your remarks to no more than 5 minutes, and we appreciate your taking the time to be with us. Mr. Foley.

**STATEMENT OF HON. MARK FOLEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF FLORIDA**

Mr. FOLEY. Thank you very much, Mr. Chairman. I want to thank you for providing me the opportunity to testify before your subcommittee this morning.

I respect and applaud your leadership in addressing my concerns and those of my colleagues regarding the activities of the U.S. Commission on Civil Rights in issuing subpoenas for a factfinding hearing earlier this year in Miami, FL.

Before I begin, I'd like to submit for the record my written testimony, correspondence relevant to my testimony, and a legislative proposal for the subcommittee's review.

I first became aware of the activities and policies of the Commission when my office received an unusual phone call on August 25, 1995, from Ms. JoAnn Peart, a resident of Delray Beach, FL, who called in a state of panic and claimed to have been harassed by a person representing the Commission. Ms. Peart explained to my staff that she had been contacted on several occasions by the Commission. In fact, she received four phone calls from the same official in just one day alone.

The official asked Ms. Peart to appear before an informational hearing on "Racial and Ethnic Tensions in American Communities—Poverty, and Equality, and Discrimination" to take place on September 14–15 in Miami, FL. Since Ms. Peart is not an expert on any issue being explored by the Commission, and did not have firsthand knowledge regarding the violation of anyone's civil rights, she thought it was very peculiar that she was selected to be a witness at the hearing.

She became even more suspicious when the Commission official pressed her to answer questions about her involvement in the Floridians for Immigration Control organization and the Florida-187 Committee, including the size of the groups' membership and their specific activities. As you know, Mr. Chairman, these are volunteer grassroots organizations interested in curbing illegal immigration. When she politely told the official she would have to consider the invitation, the official became agitated and even hostile toward her.

According to Ms. Peart, the official threatened to subpoena her to appear before the hearing against her will and would send someone to find out where she lived. In Ms. Peart's own words, she felt—and I quote—"intimidated and harassed by the Commission" and felt like she was living in the "land of the gestapo."

To illustrate the feelings that Ms. Peart must have been going through, let me quote from the September 13 editorial in the Palm Beach Post Times. "Say 'subpoena' and ordinary people get nervous. The U.S. Civil Rights Commission thinks of subpoenas as a matter of practice. Maybe that's because the Federal agency is based in Washington, where my lawyer will call your lawyer, passes as social intercourse."

Given the general rule of law, that is an abuse of the subpoena power to conduct a fishing expedition not relevant to the specific case at hand. It is not surprising that Ms. Peart was scared to death by the Commission's strong-arm tactics. The Commission went so far as even subpoenaing the committee's internal documents, including any reports, studies, memos, policy statements,

computer-generated printouts, and other writings pertaining to the committee's activities. Read the subpoena. It's broad; it's overreaching.

Let me take a few moments to talk about Ms. Peart, a life-long resident of Delray Beach, an ordinary housewife, dedicated mother of three children. She's a law-abiding citizen who devotes much of her time to community service and volunteer work. She's held such positions as president of the Parent Teachers Association at her children's elementary school, vice chairman of the Atlantic High School Parent Advisory Board, president of the Delray Beach Historical Society, and has been an active member of many more service-oriented activities. This hardly seems like someone the Government would be interested in talking to or consider subversive.

However, Ms. Peart is cofounder of the Floridians for Immigration Control and involved with the Florida-187 Committee. I commend any citizen who becomes actively involved with the political process regardless of their political view. That's the spirit of the democratic process. We encourage people, motor voter law, all these things to get people involved, to register to vote, to participate in our democracy. However, when they do, look out.

Mr. Chairman, this leads me to what I believe should be the two points to focus on this hearing. First, have the fundamental first amendment rights of the members of the Florida-187 Committee been trounced upon because the Commission chose to subpoena three members of the committee, based solely upon their affiliation?

And, second, should the subpoena powers of the Commission on Civil Rights be curtailed? The fear of overreaching government power is something that too many Americans are experiencing today. Who can blame them, when a Federal commission is subpoenaing people solely on the basis of their affiliation with citizen grassroots organization? Let me remind the U.S. Civil Rights Commission that under the first amendment to the Constitution citizens have the right of free speech, the right to peacefully assemble, and the right to petition their Government for redress of grievances.

By practicing a fundamental first amendment right, individuals of Florida-187 Committee have been targeted by a Federal commission. This is wrong. To my knowledge, none of them were accused of violating anyone's civil rights or breaking any laws. I would have understood had they been making unnecessary statements, bigoted remarks, chanting, or doing something else in violation of an individual's right—never had happened, never had happened.

A few days later, and after many negative press accounts of this incident, the Commission decided not to enforce its subpoenas. Mr. Chairman, a little too late, a little too little. The damage had already been done.

Ms. Peart was deeply embarrassed by the publicity surrounding the Commission's inquiry into her private life. Other members of the Florida-187 Committee were frightened that the Government would come knocking on their doors, too, just because they were members of the committee. The Commission's actions were enough to make two potentially new members of the group decide not to join the organization.

That brings me to my second point of focus: Should the subpoena powers of the Commission be curtailed? In my view, Mr. Chairman, the Commission clearly acted beyond the intent of Congress, which created this agency for the purpose of collecting and studying information on discrimination and to make recommendations to the President and Congress about its findings. While I support all efforts to protect the civil rights of all Americans, and applaud the agency's intentions to reach its goal, it's time to take a step back, to evaluate whether the subpoena tool is being used in a fair and reasonable manner. While I understand the Commission is granted subpoena powers by statute, the obstructive action of the Commission called into question the use of this power in intimidating and harassing citizens during factfinding hearings.

The Commission claims to advocate the protection of civil rights, but whose civil rights are we talking about? It doesn't appear to be the rights of those Floridians who are exercising their constitutional right of free speech and free association with a political group representing their beliefs.

Mr. Chairman, today we look back in horror at the days of McCarthyism and frequent government intrusion in individuals' personal beliefs and political associations. I am appalled that a commission representing the executive branch of the Federal Government, and using taxpayers' funds, would act in a manner that frightens law-abiding citizens and stifles their efforts to petition the Government for redress of grievances.

Therefore, I would like to submit to the subcommittee a legislative proposal to reign in the excessive and unreasonable subpoena power of the U.S. Commission on Civil Rights. It is my belief that the Commission's subpoena powers should be limited solely to instances where specific cases of discrimination are being investigated. For broad factfinding missions, such as the ones conducted in Miami, the use of subpoena is an abuse of power and should not be used in the first place. Barring any agreement on how to make the necessary changes in the Commission's subpoena powers, it is then my belief that subpoena powers of the Commission should be eliminated.

Our country was founded on the fundamental principle of protecting individual rights of all citizens. The Commission's disturbing actions are undemocratic, un-American, and it is my hope that this subcommittee will take the necessary steps to prevent the Commission from intimidating other citizens in the future.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Foley follows:]

PREPARED STATEMENT OF HON. MARK FOLEY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA

Chairman Canady, I want to thank you for providing me the opportunity to testify before your subcommittee this morning. I respect and applaud your leadership in addressing my concerns and those of my colleagues regarding the activities of the U.S. Commission on Civil Rights in issuing subpoenas for a fact finding hearing earlier this year in Miami, Florida. Before I begin, I would also like to submit for the record my written testimony, correspondence relevant to my testimony, and a legislative proposal for the Subcommittee's review.

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harassed by a person representing the Commission. Mrs. Peart explained to my staff that she had been contacted on several occasions by the Commission, in fact she received four phone calls from the same official in just one day alone. The official asked Mrs. Peart to appear before an informational hearing on "Racial and Ethnic Tensions in American Communities—Poverty, Inequality, and Discrimination" to take place on September 14th and 15th in Miami, Florida.

Since Mrs. Peart is not an expert on any issues being explored by the Commission and did not have first-hand knowledge regarding the violation of anyone's civil rights, she thought it was very peculiar that she was selected to be a witness at the hearing.

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To illustrate the feelings that Mrs. Peart must have been going through, let me quote from a September 13th Palm Beach Post editorial:

Say subpoena, and ordinary people get nervous. The U.S. Civil Rights Commission thinks of subpoenas as "a matter of practice." Maybe that's because the federal agency is based in Washington, where "my lawyer will call your lawyer" passes as social intercourse.

Given the general rule of law that it is an abuse of the subpoena power to conduct a "fishing expedition" not relevant to a specific case at hand, it is not surprising that Mrs. Peart was scared to death by the Commission's strong-arm tactics. The Commission went so far as even subpoenaing the Committee's internal documents, including any reports, studies, memos, policy statements, computer-generated print-outs and other writings pertaining to the committee and its activities.

Let me take a few moments to give you some background information about Mrs. Peart. A life-long resident of Delray Beach, she is an ordinary housewife and dedicated mother of three. Mrs. Peart is a law-abiding citizen who devotes much of her time to community service and volunteer work.

She has served as the President of the Parent Teacher Association at her children's elementary school; the Vice-Chair of the Atlantic High School Parent Advisory Board; the President of the Delray Beach Historical Society, and has been an active member of many more service-oriented activities. This hardly seems like someone the government would be interested in talking to.

However, Mrs. Peart is also the cofounder of the Floridians for Immigration Control and involved with the Florida-187 Committee. I commend any citizen who becomes actively involved with the political process, regardless of their political views—that's the spirit of a democratic government.

Mr. Chairman, this leads me to what I believe should be the two points of focus of this oversight hearing. First, have the fundamental First Amendment rights of the Members of the Florida-187 Committee been trounced upon because the Commission chose to subpoena three members of the Committee based solely upon their affiliations? And second, should the subpoena powers of the Commission of Civil Rights be curtailed?

The fear of overreaching government power is something that too many Americans are experiencing today. Who can blame them when Federal Commissions are subpoenaing people solely on the basis of their affiliation with citizen grassroots organization. Let me remind the U.S. Civil Rights Commission that under the First Amendment of the Constitution, citizens have the right to free speech, the right to peaceably assemble, and the right to petition the Government for a redress of grievances.

But by practicing a fundamental First Amendment right, individuals of the Florida-187 Committee have been targeted by a federal Commission—this is wrong. To my knowledge, none of them were accused of violating anyone's civil rights or of breaking any laws. A few days later, and after many negative press accounts of this incident, the Commission decided not to enforce its subpoenas.

Mr. Chairman, this was too little, too late—the damage had already been done. Mrs. Peart was deeply embarrassed by the publicity surrounding the Commission's inquiry into her private life. Other members of the Florida-187 Committee were

frightened that the government would come knocking on their doors, too, just because they were members of the Florida-187 Committee. The Commission's actions were enough to make two potentially new members decide not to join the organization.

This brings me to the second point of focus, should the subpoena powers of the Commission be curtailed? In my view, Mr. Chairman, the Commission clearly acted beyond the intent of Congress which created this agency for the purpose of collecting and studying information on discrimination and to make recommendations to the President and Congress about its findings. While I support all efforts to protect the civil rights of all Americans and applaud the agency's intentions to reach that goal, it's time to take a step back to evaluate whether this subpoena tool is being used in a fair and reasonable manner.

While I understand the Commission is granted subpoena power by statute, the obstructive actions of the Commission call into question the use of this power in intimidating and harassing citizens during "fact-finding" hearings. The Commission claims to advocate the protection of civil rights, but whose civil rights are we talking about? It doesn't appear to be the rights of these Floridians who were exercising their constitutional rights of free speech and free association with a political group representing their beliefs.

Mr. Chairman, today we look back in horror at the days of McCarthyism, and frequent government intrusion into individual's personal beliefs and political associations. I am appalled a Commission representing the Executive branch of the federal government and using taxpayer funds would act in a manner that frightens law abiding citizens and stifles their effort to organize to petition the government for a redress of grievances.

Therefore, I would like to submit for the Subcommittee's consideration a legislative proposal to reign in the excessive and unreasonable subpoena power of the U.S. Commission on Civil Rights. It is my belief that the Commission's subpoena power should be limited solely to instances when specific cases of discrimination are being investigated. For broad fact finding missions such as the one conducted in Miami, the use of the subpoena is an abuse of this power and it should not have been used in the first place. Barring any agreement on how to make the necessary changes in the Commission's subpoena powers, it is my belief that the subpoena powers of the Commission should be eliminated.

Our country was founded on the fundamental principle of protecting the individual rights of all citizens. The Commission's disturbing actions are undemocratic and un-American and it is my hope that this subcommittee will take the necessary steps to prevent the Commission from intimidating other citizens in the future.

LEGISLATIVE RECOMMENDATION—LIMITATION ON SUBPOENA POWERS OF U.S. COMMISSION ON CIVIL RIGHTS

Current Practices

The specific wording of the law creating the Commission states, "Subpoenas . . . may be issued," but the current practice is for the Commission to compel the attendance of all witnesses by subpoena even at fact finding hearings. This Commission makes findings of fact, and has no enforcement authority. Therefore, to subpoena all witnesses on general fact finding missions is an abuse of their subpoena powers which need to be curtailed. The duties of the Commission are detailed in 42 U.S.C. 1975c(a)(1-5).

Current Limitations

Under 42 U.S.C. 1975d (f), the United States Commission on Civil Rights is granted subpoena power to compel the attendance and testimony of witnesses or the production of written or other matters. The only limitations on these subpoenas is that the Commission may not subpoena someone living outside of the state where a hearing is being held or somebody who lives more than 50 miles away from the place where a hearing is being held.

Proposal

Limit the ability of the Commission to issue subpoenas to the following instances:

- 1) 1975c(a)(1)—Investigations on allegation of deprivations of right to vote due to discrimination.
- 2) 1975c(a)(2) (following the word "or")—Study and collect information concerning a denial of equal protection of the laws under the Constitution . . . or in the administration of justice.

The intent is to limit the subpoena powers of the Commission away from their over reaching powers now and have it apply only to instances when the Commission is investigating specific cases of discrimination.

Barring any agreement that can be reached on this proposal, the subpoena powers of the Commission should be eliminated all together.

August 26, 1995

The Honorable Mark Foley
U. S. House of Representatives
Washington, D.C. 20515

Re: United States Commission on Civil Rights
Contacts from Commission Staff

Dear Representative Foley:

This will serve to confirm my conversation with your office yesterday, August 24th, relative to numerous contacts from the staff of the United States Commission on Civil Rights.

The Commission apparently received my name as an individual interested in immigration reform, and staffers have contacted me repeatedly throughout August, even though I have made it clear that I do not want to testify at their hearings in Miami on September 14th and 15th. One staffer has even threatened to compel my attendance through a subpoena, in spite of my lack of probative information. I believe that the Commission's behaviour constitutes harassment, and I would ask that you look into this matter.

Contacts from Commission Staff:

August 4, 1995 I received a telephone call from Sicilia Chinn, who identified herself as a staff member. Ms. Chinn requested that I grant a phone interview, and I agreed to that request.

August 8, 1995 I engaged in the phone interview which had been requested. I attempted to be as open in discussing my views as possible. I became suspicious during the interview when the staffers began pressing me on questions relating to the size of the membership of Floridians for Immigration Control (the immigration reform group with which I am involved). They asked about the specifics concerning our activities, and, even though I doubted the relevance of these inquiries, I remained cooperative.

August 18, 1995 Sicilia Chinn called on four (4) separate occasions. During the first call I indicated that I was speaking on another phone line, and asked her to call later.

August 18, 1995 Ms. Chinn advised me that I had been selected to appear at the Civil Rights Hearing in Miami on September 15th. I responded by indicating that I would need to check my calendar and consider the invitation; at that time, Ms. Chinn indicated that my appearance could be compelled by subpoena. I was shocked, and asked her to repeat this remark. Ms. Chinn repeated her remark regarding the subpoena, and asked several additional questions. I felt that she was attempting to intimidate me, and I asserted that I did not appreciate these tactics; I then said "goodbye."

August 18, 1995 Ms. Chinn called on a third occasion this day, and inquired as to whether another representative from Floridians for Immigration Control might testify; she then asked for my street address. I indicated that I did not want to provide the street address, and Ms. Chinn then threatened to have a private investigator locate my home. I once more indicated that these tactics were unappreciated, and bid her farewell.

August 18, 1995 Ms. Chinn left a message on my answering machine, indicating that she would find transportation for me to Miami if that was a portion of the difficulty I had with appearing at the Hearing.

August 21, 1995 On or about this date, Ms. Chinn called and left a message, and I believe my daughter also took a message.

August 23, 1995 Ms. Lillian Moyano-Yob of the Commission called and left a message. I returned her call later that day, and we discussed the nature of the hearing. She believed that I did not understand the general purpose of the hearing. During our lengthy conversation I indicated that I was not an expert on any issues being explored by the committee, I did not have any first-hand knowledge regarding the violation of anyone's civil rights, and repeated my reticence to appear. Ms. Moyano-Yob was certainly more pleasant than Ms. Chinn.

* * * * *

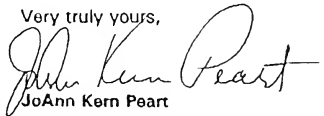
I am simply a U.S. citizen and resident of Florida who became active in the immigration reform movement in July, 1994. I do not pretend to be an expert in the area of the qualitative impact of immigration on this nation. I have never represented myself as an "expert" in the field. Further, I have not personally "denied" anyone's civil rights, I have not witnessed a situation

where anyone else had "denied" another's civil rights, nor do I seek to justify such behaviour. Since I am not an expert and have no first-hand information relating to the ostensible purpose of the Hearings, then I do not understand why I am being threatened by an employee of the federal government with *forced attendance* at the Miami Hearings.

I believe that Ms. Chinn has attempted to intimidate me, to chill my exercise of the right to engage in free speech and to seek redress from our elected officials. I simply wish to see our immigration laws enforced, and to stop the waste of our tax dollars. I believe that certain groups or individuals are behind the effort by the Commission to chill the exercise by citizens interested in immigration of their constitutional rights.

Please investigate this matter. Please allow me to extend my gratitude for the assistance of your staff, and also allow me to thank you in advance for any assistance which you may render.

Very truly yours,



JoAnn Kern Peart

cc: Hon. E. Clay Shaw, Jr.
Hon. Connie Mack
Hon. Bob Graham

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MARK A. FOLEY
16TH DISTRICT, FLORIDA
DEPUTY MAJORITY WHIP
TASK FORCE ON IMMIGRATION REFORM

AGRICULTURE COMMITTEE

SUBCOMMITTEES
RISK MANAGEMENT
AND SPECIALTY CROPS
DEPARTMENT OPERATIONS, NUTRITION
AND FOREIGN AGRICULTURE

SCIENCE COMMITTEE

SUBCOMMITTEES
SPACE AND AERONAUTICS
ENERGY AND ENVIRONMENT

Congress of the United States
House of Representatives
Washington, DC 20515-0910

August 25, 1995

Ms. Mary K. Mathews
Office of the Staff Director
U.S. Commission on Civil Rights
624 9th Street N.W.
Suite 700
Washington, D.C. 20425

Dear Ms. Mathews:

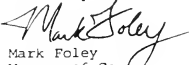
I have been contacted by Ms. JoAnn Peart of Delray Beach, Florida, regarding her recent phone conversations with staff members of the U.S. Commission on Civil Rights. Enclosed you will find a copy of her letter.

It is my understanding that the Commission is gathering witnesses for a field hearing in Miami, Florida, which will examine urban racial tensions and immigration. Ms. Peart was contacted by the Commission on several occasions in August to discuss the upcoming hearing and other immigration-related issues.

As you can see from her letter, Ms. Peart says she felt "intimidated" by a member of your staff and believes that "the Commission's behavior constitutes harassment." While the Commission has the authority to subpoena citizens to testify at hearings, I am concerned about the agency's policy in accosting potential witnesses. Therefore, I would appreciate it if you would respond to Ms. Peart's specific comments mentioned above and specify the Commission's official policy in these circumstances.

Again, thank you for your timely response to this request.

Sincerely,


Mark Foley
Member of Congress

MF/cnl

Enclosure

cc: Congressman William F. Clinger
Chairman, Committee on Government Reform
and Oversight

REPLY TO
506 CANNON BUILDING
WASHINGTON, DC 20515-0916
(202) 225-4792
FAX: (202) 225-3132
FLORIDA DISTRICT OFFICES
4440 PGA BLVD., SUITE 406
PALM BEACH GARDENS, FL 33410
(407) 627-6192
FAX: (407) 626-4749
COUNTY ANNEX BUILDING
250 HWY COUNTRY CLUB DRIVE
PORT ST. LUCIE, FL 34906
(407) 878-3181
FAX: (407) 871-0651



UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

SEP 06 1994

OFFICE OF STAFF DIRECTOR

August 30, 1995

The Honorable Mark Foley
United States House of Representatives
506 Cannon Building
Washington, D.C. 20516-0916

Dear Representative Foley:

I received your recent letter regarding the concerns raised by your constituent, Ms. JoAnn Peart. I was concerned to learn that Ms. Peart felt harassed or intimidated by her contacts with Commission staff. I want to assure you that the requests for information and the use of the subpoena power are routine procedures used in preparation for Commission hearings. The Commission always attempts to have witnesses and organizations from diverse perspectives represented at our hearings. The request for Ms. Peart's address was solely for the purpose of facilitating the service of the subpoena. I apologize for any inconvenience this may have caused her.

I will see to it that all Commission staff members remain careful in explaining our procedures and the use of the subpoena power to potential witnesses. I appreciate your calling this matter to my attention. If I can provide any further information, please contact me on (202) 376-7700.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary K. Mathews".

MARY K. MATHEWS
Staff Director

cc: Congressman William F. Clinger
Chairman, Committee on Government Reform
and Oversight

MARK A. FOLEY

18TH DISTRICT FLORIDA

DEPUTY MAJORITY WHIP
TASK FORCE ON IMMIGRATION REFORM

AGRICULTURE COMMITTEE

SUBCOMMITTEES

RISK MANAGEMENT
AND SPECIALTY CROPS
DEPARTMENT OPERATIONS, NUTRITION
AND FOREIGN AGRICULTURE

SCIENCE COMMITTEE

SUBCOMMITTEES

SPACE AND AERONAUTICS
ENERGY AND ENVIRONMENT

Congress of the United States

House of Representatives

Washington, DC 20515-0916

September 18, 1995

President Bill Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20515

Dear President Clinton:

We are writing to inform you about the recent activities of the United States Commission on Civil Rights.

In recent weeks, the Commission subpoenaed members of the Florida-187 Committee, a grassroots organization interested in curbing illegal immigration, to appear before an informational hearing in Miami, Florida. The Commission also took the unusual step of subpoenaing all of the group's internal documents, memorandums, press releases and other writings. According to one individual subpoenaed by the Commission, she felt "intimidated" and believes that "the Commission's behavior constitutes harassment." Yet, on September 10, 1995, apparently due to negative publicity on this issue, the Commission reversed its decision to enforce the subpoenas.

While we understand this Commission is granted subpoena power by statute, the actions of the Commission call into question the use of this power in intimidating citizens during "fact-finding" hearings. The damage has already been done to those citizens who were participating in lawful political activities. As these individuals were seemingly subpoenaed solely on the basis of their affiliation with the Florida-187 Committee, we believe this is a clear violation of their First Amendment rights. The citizens of Florida and of every state have a constitutional right to engage in political activities without being intimidated or harassed by a government entity.

We have serious concerns and questions about the tactics of this Commission and the manner in which it utilizes taxpayer dollars on behalf of the federal government. As this agency is an arm of the Executive branch, we believe this matter will be of particular concern to you. Therefore, we are very pleased that Congressman Charles Canady, the Chairman of the Subcommittee on the Constitution, has decided to hold oversight hearings On September 27, 1995, regarding this matter.

REPLY TO
508 CANNON BUILDING
WASHINGTON, DC 20515-0818
(202) 225-6192
FAX (202) 225-3132

FLORIDA DISTRICT OFFICES

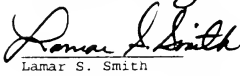
4440 PGA BLVD., SUITE 408
PALM BEACH GARDENS, FL 33410
(407) 827-8192
FAX (407) 826-4749

COUNTY ANNEX BUILDING
250 NW COUNTRY CLUB DRIVE
PORT ST. LUCIE, FL 34986
(407) 878-3181
FAX (407) 871-0651

We hope you find this information useful and if you have any questions, please do not hesitate to contact us.

Sincerely,

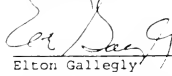

Mark Soley


Lamar S. Smith

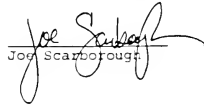

Clay Shaw


Bill Baker


Bill McCollum


Elton Gallegly


Dana Rohrabacher


Joe Scarborough

Mr. CANADY. Thank you, Mr. Foley.
Congresswoman Slaughter.

STATEMENT OF HON. LOUISE M. SLAUGHTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. SLAUGHTER. Thank you very much, Mr. Chairman. I'm delighted to be here this morning. I thank you for letting me come.

And I'm getting a reputation, I guess, as something of a purist around here, and unless my eyes deceive me, you are identified as the "charman." Is that correct? Is there an "i" there?

Mr. CANADY. There's an "i."

Ms. SLAUGHTER. OK, good, because I thought you deserved better than that. I didn't want you to be the clean-up man.

[Laughter.]

Mr. CANADY. Your eyes do deceive you.

[Laughter.]

Ms. SLAUGHTER. They did, indeed. I guess it must be these new glasses.

Mr. FRANK. Around here, that's not the only thing that will deceive you.

Ms. SLAUGHTER. Right.

[Laughter.]

Ms. SLAUGHTER. Well, I am pleased to be here this morning, because I'm glad that this committee, Judiciary, which has the obligation to do so, is looking into the intrusion into the lives of its citizens. I've only got one purpose here this morning. I want to share your concern, but I'm also concerned about a subcommittee on which I sit, and that is part of the Government Reform and Oversight Committee, and the Subcommittee on Economic Growth, Natural Resources, and Regulatory Affairs.

It's very timely that I'm able to be here this morning to talk to you about this, because on September 28, there was a hearing by that subcommittee on the proposal to limit political advocacy by those who receive Federal grants. It was fairly reckless, and, frankly, many groups were targeted. There were a number of things that took place there that I just want to bring to your attention.

It was, supposedly, as I said, to look into political activities. In preparation for this hearing, the subcommittee embarked on a full-fledged and outright investigation of the groups that were asked to testify. First, witnesses were asked detailed questions about their tax-exempt status, an issue which is irrelevant to the legislation because the bill applies to both profit and nonprofit groups.

Let me just give you a couple of those questions: "What's the tax status of your organization?" "Identify each organization affiliated with your organization by stating the affiliate's name, tax status, tax identification number, place of incorporation, principal business address, telephone, and facsimile number."

Now this is for every organization affiliated with the witnesses who came there that morning. In the case of the YMCA, they said they had at least 140,000 vendors which they would have to survey in order to meet this requirement.

"How much Federal taxes would your organization have owed last year had you not been tax-exempt? In the past 5 years? During the existence of your organization?"

Again in the YMCA, in Girl Scouts, Boy Scouts, CARE, Catholic Charities, a number of other organizations that are targets of this legislation it would have been a lengthy, expensive, and extraordinarily time-consuming. But that's not the whole of it; it would have been an invasion of their first amendment rights.

"In the past 5 years has your organization endorsed any products, goods, or services? If so, identify the endorsements."

In some cases, these were groups that had gotten together with city and county organizations to get together in programs against violence. Obviously, these would be the sorts of things they'd have to go back over their records over and over again to find out.

One of the things, too, that was asked was really pretty unusual. The groups were asked to meet with the counsel prior to the hearing to review these questions. As far as I know, that has never been done in the House before.

Finally, witnesses were told that they were required to give the listing of every group, and if they were an association or alliance, and every dollar of tax money they had ever received, and also to fill out this questionnaire.

The right of assembly is very precious here. And the first idea, to say to everybody, "We want to know everybody you associate with," really does smack of McCarthyism. I don't recall any time since that we've asked for that kind of thing. If they're not intrusive, if they're not constitutional, I don't know what they are. So, in that spirit this morning, I bring to you copies of that questionnaire, and I'd like to ask that they be distributed, please, to the members of your subcommittee.

And I have only one request of you, Mr. Chairman: as you look at questionnaires and intrusion and violations of citizens' rights, that you include this questionnaire, that's being asked by a subcommittee of the Congress of the United States, in violation of everything you're talking about here this morning I very much appreciate your consideration of this questionnaire.

Mr. FRANK. I would ask, Mr. Chairman, unanimous consent to put that questionnaire in the record.

Mr. CANADY. Is there objection?

[No response.]

Mr. CANADY. Without objection.

[See appendix, p. 87.]

Mr. CANADY. Mr. Shaw.

STATEMENT OF HON. CLAY E. SHAW, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. SHAW. Thank you, Mr. Chairman. It's a pleasure to be back before this committee on which I used to be Mr. Frank's ranking Republican member.

Mr. FRANK. It was a different subcommittee, Mr. Shaw.

Mr. SHAW. Oh, a different subcommittee.

Mr. FRANK. That was Administrative Law, yes.

Mr. SHAW. No, well, this Committee on the Judiciary.

Mr. FRANK. Oh.

Mr. SHAW. I was your ranking Republican member.

Mr. FRANK. I apologize.

Mr. CANADY. Close enough. Close enough.

Mr. SHAW. For which I happen to be very proud, Mr. Frank; you never brought me a pitcher of iced tea, but I'll consider that a significant upgrade.

[Laughter.]

Mr. FRANK. When I was the chairman, I had other people to do that for me.

[Laughter.]

Mr. SHAW. There is a difference in being in the minority, Mr. Frank.

[Laughter.]

Mr. SHAW. I'd like to take up where Mark Foley left off. He described, I think in great detail, the harassment, and it's very, very—I think very peculiar, that something that considers civil rights, and is a commission on civil rights, would violate the civil rights of the citizens of the district which Mark and I share in Palm Beach County.

This group was preparing for a meeting down in Miami, FL. At this meeting, which was held at the Intercontinental Hotel, which is a very expensive, exclusive waterfront hotel in downtown Miami—at this meeting, and I want to describe this to you, in attendance at this meeting were about 18 to 15 people. Now that's in the audience, and that included my staff members and Mr. Foley's members who were down there.

But let me tell you what else they had. They had these shiny, expensive press kits that were distributed. They had—there were eight Commissioners, three staff members inside the room, two deaf translators, three staff members outside the room, four foreign language translators, two videotapers, and one stenographer. Now what in the world is going on? What in the world are we spending our money for?

Now I was very surprised to find that there are these many groups that have subpoena power. And I know that that's the primary issue that you are looking at. I asked the Library of Congress to research exactly who does have subpoena power in our Federal Government. And I have a document which I would ask to be handed out to this committee. You might want to make it a part of your record, as you might see fit.

But it shows that there's some 214 of these organizations, many of which I've never heard of. Subpoena power is a very, very drastic power. It's a way in which you can get around for due cause particular provisions within the Constitution of the United States which are protected provisions. And I think that all of us, being concerned about the civil rights as set forth and enunciated within the Constitution, that we want to be very sure who has this extraordinary power. This isn't a partisan thing. I don't know who appointed the members of this committee. They may very well—and I would say that in that we've had three terms of Republican Presidents, I would guess that it's probably heavily weighted on the Republican side.

But I think that all of us have a commitment, particularly when we're trying to cut back, that the excesses that would appear, as the way this organization was organized, as their hearing proceeded in Miami, the expense of it—I think all of this should be analyzed. And in that there were two people making videotapes, I

would guess that if this subcommittee wanted to view those videotapes and get firsthand exactly what happened, then I think that this might very well be a worthwhile thing for you to have your staff or someone to review these tapes, so they can see if anything worthwhile was accomplished at this meeting.

In the opinion of my staff people that were there—Mark can comment on what information he got from his—they told me that nothing of significance was accomplished. And I would guess that the expense of this meeting was considerable when you consider the travel expenses, the lodging expenses, meals, of all of the people that I have told you were at this particular meeting; I think that's something that we need to take a very close look at. And in that this committee will be up for reauthorization next year, I think that this is something that you do want to consider.

Thank you, Mr. Chairman, and thank you, members of the subcommittee.

I'm going to have to excuse myself. I'm supposed to be at another meeting right now, but thank you very much for your indulgence.

Ms. SLAUGHTER. May I go as well, Mr. Canady? I have an appointment.

Mr. CANADY. Yes. There's just one point I want to make while you're here.

Ms. SLAUGHTER. All right.

Mr. CANADY. And that is that, before we go to Mr. Rohrabacher, to give you an opportunity to respond to it, if you wish, and I'll take this out of my 5 minutes.

There is a difference between receiving a request for information in the form of a letter and receiving a subpoena.

Ms. SLAUGHTER. No question about that.

Mr. CANADY. I think that is a critical difference that distinguishes the document that you have presented to us, the request for documents that was, I understand, sent out by Mr. McIntosh's subcommittee, and the situation involving the Civil Rights Commission. I'm not familiar with what was requested here, but, again, the refusal to provide any of this information or the decision to provide any of it is strictly voluntary. A subpoena creates a very different situation. And that, I think, is a relevant difference, and in your testimony you talk about people being required to submit information. I don't know that anything was done to do that.

Ms. SLAUGHTER. Well, I agree with you that a subpoena and this request are two different things; the important thing here is what's in this request. And without any question, there are intrusions against the civil rights of the persons who were asked to do it. And, as a matter of fact, at the hearing, when one woman refused to give the members of her alliance—she got no Federal money at all—she was accused of taking the fifth amendment. It was a very serious issue there, Mr. Chairman.

And I come here in the spirit of comity, as a member of this institution, to say that if you are going to work on protecting the civil rights of the citizens of the United States, we have to include in that people who appear before committees and subcommittees of this institution. I'm very concerned about whether or not some subcommittees are totally out of control with some of the things that they are doing and riding roughshod over people.

Mr. CANADY. Well, again, the only——

Ms. SLAUGHTER. I'm sure that we could give you some supporting information. For example, let me—if I could just have one more——

Mr. CANADY. It's my time right now.

Ms. SLAUGHTER. All right.

Mr. CANADY. Let me just say this: it is a very different matter to issue subpoenas. Now the subcommittee could have issued subpoenas. The subcommittee——

Ms. SLAUGHTER. Mr. Canady, it is not a different matter.

Mr. CANADY. Oh, it is. The subcommittee did not do that. That would have raised it to a different level.

Ms. SLAUGHTER. But, however——

Mr. CANADY. Now you may disagree——

Ms. SLAUGHTER. But isn't the difference the fact that there would be punishment involved? What I want to say to you is that the people who refused to answer some of these were punished by reality——

Mr. CANADY. I know——

Ms. SLAUGHTER [continuing]. Being accused of taking the fifth amendment.

Mr. CANADY. Well, there's no punishment involved in that.

Ms. SLAUGHTER. Frankly, there was no fifth amendment issue here.

Mr. CANADY. If the gentlelady will suspend——

Ms. SLAUGHTER. Certainly.

Mr. CANADY. There's no punishment involved in that. That was a request that was made to people. One can argue that that was a wise request or not, but the fact of the matter is that the subcommittee had the power to subpoena those folks and did not exercise that power.

And, with that, I appreciate your being here.

Ms. SLAUGHTER. Well if I could just say one thing——

Mr. FRANK. Ms. Slaughter——

Ms. SLAUGHTER. What I would like you to do, as you look at what you're talking about with the Civil Rights Commission, I think that it's a perfectly legitimate request——

Mr. CANADY. I'm sorry, my time is gone. Mr. Frank, Mr. Frank is recognized.

Ms. SLAUGHTER. All right.

Mr. FRANK. Let me—go ahead, Ms. Slaughter.

Ms. SLAUGHTER. As you look at that, I want you to look at this questionnaire and tell me, other than subpoena power, what is the difference?

Mr. FRANK. Let me also ask the gentlewoman—I'd like to ask the gentlewoman, too, because I think it is—I think that both the Civil Rights Commission and the subcommittee of Mr. McIntosh erred in intruding into people's personal political affairs, first amendment rights. And a subpoena request makes it worse. But I would disagree if the suggestion is that it's OK if you don't subpoena and it's wrong if you do, especially since in this case since they dropped the subpoena. They didn't follow through.

And one of the things that Mr. Foley said was that a Ms. Peart, I believe, was humiliated by this, and we should not be in the busi-

ness of humiliating citizens. But as the gentlewoman from Kentucky has pointed out, when a witness——

Ms. SLAUGHTER. New York.

Mr. FRANK [continuing]. When a witness on legislation is before a committee and is asked a question that she should not be asked about her first amendment rights, and refuses to answer, and the chairman of the subcommittee says "Oh, you're pleading the fifth amendment," that's an effort to humiliate her. So there are humiliations and intrusions that go beyond subpoena.

And I would ask the gentlewoman—she was at the hearing—was this a purely a harmless request for information, and if people ignored it, then there would be no consequence?

Ms. SLAUGHTER. I will tell you that the testimony of the people there felt that this was not only intrusive of their civil rights, but in order to answer it, it would have taken them years to get the information together, as well as a great deal of money expended. If you want to give me a little bit of extra time, I could read some of the things in here. They're pretty appalling.

Mr. FRANK. You're on my time; go ahead.

Ms. SLAUGHTER. All right.

"Produce a copy of the founding documents and/or charter for your organization that sets forward its founding or guiding principles.

"Produce a copy of your organization's annual report for the last 2 years and all audits.

"What is your understanding of the justification of your organization's tax-exempt status?

"Does your organization engage in any non tax-exempt business activities?"

Is that the proper thing for that subcommittee to inquire into? I'm not so sure that it is. What they did with their own private money was the issue that they wanted to talk about.

"In each of the past 5 years, state your organization's expenditures on salaries, including wages, bonuses, expense accounts, all other forms of compensation; itemize the salaries, including wages, bonuses, expense accounts, all other forms of compensation paid to your top five officers and directors for the past 5 years."

"What percentage of your organization's"——

Mr. FRANK. Let me say I think you've made the point.

Ms. SLAUGHTER. Frankly, I think that the document speaks for itself, and, as I pointed out——

Mr. FRANK. Thank you, Mr. Chairman.

Ms. SLAUGHTER [continuing]. In the case of the YMCA, it would have required them to literally poll more than 140,000——

Mr. CANADY. I'm sorry, the gentleman's time has expired.

Ms. SLAUGHTER. All right.

Mr. CANADY. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, I'd just like to ask a very brief question of Representative Slaughter.

What's the difference between this request for information and the subpoenas that Mr. Dingell issued when he was chairman of the Commerce subcommittee for people that he was investigating?

Ms. SLAUGHTER. Mr. Sensenbrenner, I am not an attorney. I don't have any idea what Mr. Dingle was doing and who he subpoenaed. I am a member—

Mr. SENSENBRENNER. He subpoenaed a lot of people in his day.

Ms. SLAUGHTER. Well, he may have, he may have, and the Civil Rights Commission. I'm not here to talk about that. I'm only talking about whether this request was a proper request to make by a subcommittee of the House of Representatives.

Mr. SENSENBRENNER. Well, we have an Ethics Committee that makes those types of determinations—

Ms. SLAUGHTER. And they may have to eventually do that.

Mr. SENSENBRENNER [continuing]. That makes those types of determination on whether an individual Member or a committee or a subcommittee has been in violation of the rules.

Ms. SLAUGHTER. I understand that, but my request is, because you are looking into the intrusion in the civil rights of citizens of the United States, and since, as I understand it, what you're doing here today is persons who were harassed by questionnaires, and under subpoena, we'll admit that—but if you would, please, consider whether this questionnaire falls at all under your jurisdiction as to whether or not civil rights of persons are being abridged.

Mr. CANADY. If the gentlewoman will yield—

Mr. SENSENBRENNER. If I could reclaim my time—

Ms. SLAUGHTER. Certainly.

Mr. SENSENBRENNER. I think that what Mr. McIntosh's subcommittee is trying to get into is whether public money that was appropriated by Congress has been properly spent by people who receive grants. Whether he did it or not in a proper manner or not is another issue. But it certainly is within the oversight jurisdiction of the Congress of the United States to see whether public money is being properly spent, just like we're doing today with the Civil Rights Commission. And to say that asking people who receive Federal grants should not respond to questions by Congress on how they spend that money I think is a complete misunderstanding by you on what the role of the Congress of the United States is.

Ms. SLAUGHTER. If I may make one comment—

Mr. CANADY. Would the gentleman yield?

Mr. SENSENBRENNER. I yield to the chairman.

Ms. SLAUGHTER. But may I answer what Mr. Sensenbrenner said?

Mr. FRANK. Can she answer the question?

Ms. SLAUGHTER. If I could just say that—

Mr. CANADY. OK, please, the gentlelady will suspend.

Ms. SLAUGHTER. All right.

Mr. CANADY. The gentleman has yielded the time to me. Let me make one observation.

We appreciate your comments on this subject. We have received the information. We have a responsibility today to focus on the activities of the Civil Rights Commission, and we would like to proceed with that.

Ms. SLAUGHTER. Indeed.

Mr. FRANK. But, wait, Mr. Chairman, I have a parliamentary inquiry. A parliamentary inquiry: first, two of you have asked ques-

tions. Does she not get to answer Mr. Sensenbrenner's questions? He asked her a question.

Mr. CANADY. Mr. Sensenbrenner has yielded the time to me.

Mr. FRANK. And, therefore, you're not going to let her answer the question?

Mr. SENSENBRENNER. Mr. Chairman, I will reclaim my time. I don't think that the—

Mr. FRANK. This is a great first amendment argument—

Mr. SENSENBRENNER. I don't think that the testimony by Representative Slaughter is at all relevant to the oversight hearing in the Civil Rights Commission—

Mr. FRANK. Then why did you ask her questions?

Mr. SENSENBRENNER. It's relevant to something else, but it's not relevant to the purpose for which the chairman of this subcommittee has called the hearing.

Mr. FRANK. Mr. Chairman, I would like to be heard on that point, because I think it is directly relevant.

Mr. CANADY. Mr. Frank, you're not recognized.

Mr. CONYERS. Mr. Chairman.

Mr. CANADY. Mr. Conyers.

Mr. WATT. Parliamentary inquiry.

Mr. CONYERS. Thank you. I'll yield for—

Mr. WATT. I just want to make a parliamentary inquiry. I walked in to this, but I have a list, a witness list here, which indicates that we have a panel on which Ms. Slaughter is one of the witnesses. Do I understand the chairman to be saying now that all members of this committee, subcommittee, are not going to be allowed to ask questions of this panel? Because if that—

Mr. CANADY. No, that's not—that's—if you understand that, you have misunderstood it. Mr. Frank has been recognized; Mr. Conyers is now recognized, and you in your turn will be recognized as well.

Mr. WATT. I just wanted to make sure that we were not going beyond the regular order of things around here. I thought I understood the chairman to say that—

Mr. CANADY. Well, once again, you have misunderstood the chairman.

Mr. Conyers is recognized.

Mr. WATT. Well, it's not the first time that I've misunderstood—

Mr. CANADY. I understand that it's not the first time that you've misunderstood the chairman.

Mr. WATT. It's not the first time the chairman has misunderstood me.

Mr. CANADY. I'm sure it won't be the last.

Mr. Conyers.

Mr. WATT. It won't be the last time, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Chairman. I wanted to make sure that Ms. Slaughter was able to answer the questions that she was asked before time was yielded to you. And if I could go back to that point—do you want me to cut her off, too?

[Laughter.]

Mr. FRANK. No, I want to add to what she's going to comment on, if I could, just one question.

Mr. CONYERS. All right.

Mr. FRANK. Because when Mr. Sensenbrenner said he was concerned about Federal money, I would ask if Ms. Slaughter would address—one of the questions in the questionnaire of Mr. McIntosh's subcommittee sent to this group was, "What percentage of your non-Federal budget do you spend on political advocacy?"

Now I would just want her to comment on that.

Ms. SLAUGHTER. I would like to comment on that because I think, as everybody knows on this panel, it is absolutely illegal to use any of your Federal money for lobbying, and indeed, that was not really the issue here. It was their private money. That question was made very specific. The IRS checks these audits every single year; there has been no complaint brought against any of these organizations.

The subcommittee said that they believed that the beer wholesalers at one time had accused a group that was similar to Mothers Against Drunk Driving, but there was no real case there, no penalty ever assessed, and there is literally—in the years since this Congress passed laws that you could not use your Federal grant money for lobbying, that any case has been brought. This hearing was about their private funds.

I'm not trying to be here—I'm not trying to cause trouble, to be frivolous, and if I'm out of order in your hearing this morning, then please forgive me. But I really thought that when I had read about what you were trying to do here, and especially after I heard Mr. Foley, that you wanted to know about things like this. Excuse me if I'm wrong.

Mr. CONYERS. We do. No, we do. You're right. And we're glad you're here.

Mr. FOLEY. Can I just ask the chairman, is it possible—

Mr. CONYERS. Just a moment, Mr. Witness—

Mr. CANADY. The time is Mr. Conyers.

Mr. CONYERS. This is not a discussion; this is a hearing. I think you've testified already, and I'm sorry I've missed you.

So let me just try to get a backdrop, Ms. Slaughter, of the kind of hearing and the circumstance that makes your testimony appropriate this morning at this hearing. Could you fill me in on that?

Ms. SLAUGHTER. I would be happy to, Mr. Conyers. This questionnaire that you have before you that has been distributed to all the committee members was handed out to the witnesses before a subcommittee meeting on the 28th of September, and was considered by all of them to be an intrusion of their rights. And, in the one case, as I pointed out, for the YMCA, would have required them to survey 140,000 or more vendors that they dealt with.

It was not the Federal money that was at issue here, because everybody knows that that cannot be used; it was their private money—and, indeed, prohibited them from gathering with local and city councils to even have discussions without counting as lobbying.

Mr. CANADY. The gentleman's time has expired. Mr. Watt.

Mr. ROHRBACHER. Mr. Chairman, may I ask a point of personal courtesy? Frankly, I came here to testify as well.

Mr. CANADY. Mr. Rohrabacher, I apologize to you.

Mr. WATT. Has Mr. Rohrabacher not testified?

Mr. CANADY. Mr. Rohrabacher has not testified. We were trying to accommodate Ms. Slaughter.

Ms. SLAUGHTER. I have an 11 appointment.

Mr. CANADY. We were trying to accommodate Ms. Slaughter. We had some questions for her, some comments with respect—

Mr. WATT. I don't have any questions of Ms. Slaughter, if the regular order would get us back to allowing the other two people to testify. Is that where we would be?

Mr. CANADY. Yes, Mr. Foley has testified. If you don't have any questions—

Mr. WATT. I don't have any questions of Ms. Slaughter, and if you want to go back to Mr. Rohrabacher—

Mr. CANADY. The Chair would appreciate that, and I'm sure Mr. Rohrabacher would appreciate that.

Mr. WATT. I'm delighted to hear from Mr. Rohrabacher.

Mr. CANADY. Thank you. Mr. Rohrabacher.

STATEMENT OF HON. DANA ROHRABACHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ROHRABACHER. Thank you. Mr. Chairman, members of the subcommittee, thank you for this opportunity to testify today. I am here to express my deep concern over a dangerous trend that has Federal agents knocking on the doors of Americans who participate in the democratic process.

And while Ms. Slaughter is here, let me differentiate between Americans who are participating in the democratic process, who should not be the subject of government harassment or even government questioning as to their finances, versus organizations that accept government money and accept tax-exempt status. It is the duty of this Congress to ask questions of people who get government money. It is the duty of this Congress to make sure that tax-exempt status is not being used as a means to finance advocacy before the Government. It is not the purpose of this Government and this Congress, and any panel connected with this Congress, to be trying to suppress people who are simply involved in the democratic process. That's what Mr. Foley is talking about, and that's what I'm here to talk about today.

In a disturbing pattern, the Clinton administration—and I hope that we won't be deflected from this point today by an attempt to sidetrack this panel—but in a disturbing pattern, the Clinton administration is using the power of the Federal Government to intimidate individuals with whom it does not agree, who are simply exercising their constitutional right to engage in political activities. And this is far different than asking people who receive Federal money or tax-exempt status questions to justify that status and the receiving of that money. These outbreaks of intimidation that are occurring and the harassment that we've heard about from Mr. Foley must not continue. We need to investigate just how widespread this Federal abuse of power is, and I recommend even more hearings, and I commend you for holding this hearing today.

The latest victims of the administration's harassment are members of Florida-187 Committee who were issued subpoenas to appear before the U.S. Commission on Civil Rights last month, as Mr. Foley mentioned. Not only were members of this organization or-

dered to appear, the Commission also demanded to have copies—and this is really important—copies of the groups' internal documents, including those detailing campaign strategy and other sensitive information. This is as far different from what Ms. Slaughter has talked about as one can imagine.

How many of us would feel comfortable about having our campaign plans seized by the Government and put on public display for our opponents to read a full year in advance of the election? Imagine the chilling effect the Commission's actions would have on free speech if steps had not been taken by this subcommittee to stop this attack, and it was only when this subcommittee and Mr. Foley and others got involved that this harassment stopped. Unfortunately, other agencies of the Federal Government are using similar tactics and remain unrepentant, and that's the purpose of my testimony today.

Three days before the November 1994 election in which California voters overwhelmingly approved proposition 187, Assistant Attorney General Deval Patrick ordered an FBI agent to the door of the proposition's coauthor, Barbara Coe, Ms. Coe. And what was her alleged crime? Distributing flyers which state that only U.S. citizens are allowed to vote. Ms. Coe wasn't breaking any law, and the Assistant Attorney General knew that.

Once the election was over, the investigation was suddenly called off. Ms. Coe strongly feels that the incident was nothing less than an attempt by the Federal Government to abridge her personal freedom of expression. Let's call it "intimidation." That's exactly what it was.

Mr. Chairman, Barbara Coe and the individuals involved in the Florida-187 campaign are not antigovernment conspirators and they are also not recipients of government funds or tax-exempt status. They are simply hard-working American citizens who are participating in the democratic process to promote the issues that they believe in.

Who wouldn't be frightened to receive a Federal subpoena or have an FBI agent questioning your legal activities? I am alarmed at the use of the Government power by liberals in the Clinton administration to intimidate and harass individuals—

Mr. WATT. Mr. Chairman, may I make a parliamentary inquiry?

Mr. CANADY. The gentleman from North Carolina.

Mr. WATT. I thought this hearing was about oversight of the Civil Rights Commission.

Mr. CANADY. That is the subject of this hearing. I will point out that the subcommittee also has jurisdiction over the Civil Rights Division—

Mr. WATT. Well, that's fine, but I thought this particular hearing was about the Civil Rights Commission.

Mr. CANADY. Well, I think that this is certainly—

Mr. ROHRABACHER. I thought that since Ms. Slaughter raised this issue, I thought I would—

Mr. CANADY. I think this is certainly within the scope of the subcommittee's responsibility, much more than considering what Mr. McIntosh's subcommittee might have done.

Mr. WATT. I'm kind of following the lead of the Chair. I mean, he was raising some questions about where Ms. Slaughter was

going; I'm wondering where Mr. Rohrabacher is going. I thought we came here to do oversight of the Civil Rights Commission and we get on this tirade about the FBI, the——

Mr. ROHRABACHER. Mr. Chairman, if I could answer the gentleman's question——

Mr. CANADY. Yes, actually, Mr. Rohrabacher, please, and you can say what you wish to and please complete your statement. Let's give Mr. Rohrabacher the courtesy of completing his statement. We extended that courtesy to Ms. Slaughter, and we should do likewise to Mr. Rohrabacher, who has been very patient in waiting here.

Mr. WATT. Well, I just wanted to make sure I understood the focus of this hearing.

Mr. CANADY. The gentleman is not recognized; Mr. Rohrabacher is recognized.

Mr. ROHRABACHER. Thank you very much.

And whereas the focus of the hearing deals with the activities of the Civil Rights Commission, and whereas I'm trying to draw in comparisons of other activities by this administration to what the Commission has done, this testimony is not only relevant to the Commission, but relevant to exactly what this hearing is all about today.

Basically, what I see, and what we seem to see, is what has been described by Mr. Foley and what I'm describing as happening in California, is a process which smacks of intimidation. The Founders of our country understood that the greatest challenge to our freedom is a government out of control, and that eternal vigilance is the price of liberty. That's what we're here to talk about today, and I recommend and I commend this committee for holding these hearings.

This isn't just happening in Florida, it's not just happening with Barbara Coe; it's not just happening up in San Francisco, where HUD went way out of control and started threatening people if they protested some sort of halfway house in their neighborhood. We're coming to a point where government in this country is getting out of control with honest citizens, and not just citizens that are getting government money, because the Government has, and we as a body have, an obligation to see that our tax-exempt status isn't given to people who are engaged in political activity or receive political funds. But it's involved with trying to snuff out people who are simply engaged in their rights as Americans to engage themselves in the political process.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Rohrabacher follows:]

PREPARED STATEMENT OF HON. DANA ROHRABACHER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to testify today. I am here to express my deep concern over a dangerous trend that has agents of the federal government knocking on the doors of Americans who are participating in the democratic process. In a disturbing pattern, the Clinton Administration is using the power of the federal government to intimidate individuals it does not agree with who are simply exercising their constitutional right to engage in political activities. These outbreaks of intimidation and harassment must not be allowed to continue. We need to investigate just how widespread this abuse of federal power is and I commend you for holding this hearing.

The latest victims of the Administration's harassment are members of the Florida-187 Committee who were issued subpoenas to appear before a U.S. Commission on Civil Rights hearing last month. Not only were members of this organization ordered to appear, the Commission also demanded to have copies of the group's internal documents, including those detailing campaign strategy and other sensitive information. How many of us would feel comfortable having our campaign plans seized by the government and put on public display for our opponents to read a year in advance of our next election? Imagine the chilling effect the Commission's actions would have had on political speech if steps had not been taken by this Subcommittee to stop their attack on political expression.

Unfortunately, other agencies of the federal government are using similar tactics and remain unrepentant. Three days before the November 1994 election in which California voters overwhelmingly approved Proposition 187, Assistant Attorney General Deval Patrick ordered an FBI agent to the door of the proposition's co-author, Barbara Coe. Mrs. Coe's alleged crime? Distributing flyers which stated that only U.S. citizens are allowed to vote. Mrs. Coe wasn't breaking any laws and the Assistant Attorney General Patrick knew that. Once the election was over, the investigation was suddenly called off. Mrs. Coe strongly feels that incident was nothing less than an attempt by the federal government to abridge her personal freedom of expression.

Mr. Chairman, Barbara Coe and the individuals involved with the Florida-187 campaign are not anti-government conspirators. They are simply hard-working, American citizens who are participating in the democratic process to promote issues they believe in. Who wouldn't be frightened to receive a federal subpoena or have the FBI question your legal political activities? I am alarmed at the use of government power by liberals in the Clinton administration to intimidate and harass individuals whose beliefs they do not agree with. Because they know they can not win the public debate on illegal immigration, these liberals are resorting to heavy handed tactics, attempting to silence their opponents through intimidation and fear.

The Founders of our country understood their greatest challenge was to devise a government that would respect the rights of the governed. They succeeded brilliantly, but cautioned that eternal vigilance was the price of the liberty they fought so hard to give us. I commend Mr. Foley and the Chairman for their quick action to protect American citizens from the Commission's menacing actions. I urge the Subcommittee and this Congress to ensure that the Commission never intimidates anyone again. The curtailment of the Commission's subpoena power, which is clearly being abused, should be examined. Tactics such as these must never be allowed to stand—and thankfully, this time, they were not allowed to stand.

Mr. CANADY. Thank you, Mr. Rohrabacher.

Are there members of the subcommittee who have not had an opportunity to question members of the panel who wish to ask—

Mr. FRANK. I would just like to question Mr. Rohrabacher.

Mr. CANADY. Mr. Frank, you'll be recognized.

Mr. FRANK. What—

Mr. CANADY. Although with respect to Mr. Watt, would you prefer to be recognized first since you haven't had an opportunity to?

Mr. WATT. That's fine. I assume you're going to give me 10 minutes, right? I get to question Mr. Foley for 5 minutes and Mr. Rohrabacher for 5 minutes?

Mr. CANADY. No, we're going to have one additional round of questions for this hearing. If you had wished to question Mr. Foley, you could have questioned him before.

Mr. WATT. Oh, I thought you were trying to get us to go back to regular order and that you wanted Mr. Rohrabacher—

Mr. CANADY. The regular order would be to question the members of the panel at once.

Mr. WATT. In that case the regular order would be—

Mr. CANADY. Mr. Frank—Mr. Frank is recognized.

Mr. WATT [continuing]. Let Mr. Frank go.

Mr. CANADY. Mr. Frank is recognized.

Mr. FRANK. My point, first of all, is I agree in the broad scope of this, and the problem with efforts to impinge upon people's first amendment rights is that they are reinforcing. So I think it's reasonable to bring them all in. I didn't think that either Ms. Slaughter or Mr. Rohrabacher should have been confined.

I disagree with the formalism, though, here that seems to me to be there. Particularly, I'm surprised to have my colleague, Mr. Rohrabacher, put so much focus on tax exemption. I had understood the general conservative political position to be that the Government wasn't necessarily entitled to your taxes in the first place, and that a decision by the Government to forgo taxing you should not be considered some great boon. And I've heard conservatives say that in a number of cases—that tax credits, tax exemption, not taxing people should not be considered some affirmative government favor.

And since large segments of the population are tax exempt, churches for instance, and others, if you were to adopt what it seemed to me you were saying, which is you divided your view—you talked about Americans who were engaged in political activities and then organizations that got a tax-exemption. It wasn't clear whether they were Bulgarians or Mongolians, because they were not Americans as you do your distinction. They were Americans who do political activity, and then there were these organizations of indeterminate nationality who got a tax exemption. And my question to you is, do you really want to make that distinction, whereby people who receive tax exemption, leave aside direct Federal funding now where I think there is a more direct oversight responsibility, but people who receive tax exemption, that we could ask them, for instance, whether they supported any candidate or whether they did anything, how much political stuff they did?

It is one thing to say that you are—or, let me talk about the Federal funds. People who receive Federal funds—

Mr. ROHRABACHER. To answer that question, I would say absolutely yes. If we give a tax-exempt status to an organization, we have not only a right, but we have an obligation to see that a tax-exempt church, for example, is not using those funds to come to lobby Congress or participate in an election.

Mr. FRANK. No, no, the question was not whether they were using those funds; it's any funds. So that's what you're saying, is that if you have a tax exemption, then you can't lobby at all. I don't understand the law to say that.

Mr. ROHRABACHER. We have a—

Mr. FRANK. Excuse me, I want to finish the question.

Mr. ROHRABACHER. We have a right to ask about it.

Mr. FRANK. Well—

Mr. ROHRABACHER. And it's far different—

Mr. FRANK. No, excuse me, but I want to ask the question.

Mr. ROHRABACHER. OK.

Mr. FRANK. What you're talking about is a formalism here that I think threatens a lot of people, because a lot of people have tax exemption, and you're talking about a degree of intrusion by a congressional committee. Whether we have a right or not, sure we have a right; people have a right to do a lot of things. The question

is whether it is prudent to exercise that right. And treating people with——

Mr. CANADY. The gentleman's time has expired.

Mr. FRANK. Treating people with tax exempt——

Mr. CANADY. The gentleman's time has expired.

Mr. ROHRABACHER. The answer is yes.

Mr. CANADY. Mr. Hyde.

Mr. HYDE. I have no questions.

Mr. CANADY. Mr. Conyers.

Mr. CONYERS. Thank you very much. I'm delighted to be here to learn about this new problem, which I want to get concerned about and worked up about, but I'm just not taking it all in.

Mr. Rohrabacher, your suggestion was that the whole Clinton administration is in an intimidating process? And you named Lavelle Patrick, the Assistant Attorney General in charge of civil rights.

Mr. CANADY. That's Deval Patrick.

Mr. CONYERS. Deval Patrick. Is that correct?

Mr. ROHRABACHER. No, it's not correct. I did not say the whole Clinton administration was out of control.

Mr. CONYERS. Oh, I'm glad to hear that.

Mr. ROHRABACHER. There are liberals within——

Mr. CONYERS. The Government is out of control?

Mr. ROHRABACHER. That's right. There are liberal—that's not the whole Clinton administration.

Mr. CONYERS. OK.

Mr. ROHRABACHER. There are liberals within the Government, within the Clinton administration, that are misusing their power. We've seen it all over the United States. I believe Waco was an example of this, but if we just focus on the subject of this hearing, I believe this is a great example of the misuse of subpoena power. And I think that when subpoena power is misused, it should be taken away. And in this case, they are trying to suppress people who are just engaged in the democratic process.

Mr. CONYERS. Well, could you identify some of these people, because I've supported this administration so far?

Mr. ROHRABACHER. Certainly.

Mr. CONYERS. Deval Patrick is one of them. Now he happens to be the head of the civil rights enforcement, which is a pretty big charge. If he's intimidating groups, this is a pretty serious charge.

Mr. ROHRABACHER. I think it is a serious charge, and I'm very happy to——

Mr. CONYERS. Just a moment, wait a minute. That wasn't a question; I know we're in agreement on that.

Did you communicate this grievance to Mr. Patrick? In other words, does he know about this charge?

Mr. ROHRABACHER. Yes, I have.

Mr. CONYERS. And has he responded to it?

Mr. ROHRABACHER. Yes, my office has personally communicated with him. We have a response. [Speaking to staff.] Yes, their response was to call off the investigations after we made our inquiries.

Mr. CONYERS. And that satisfied you?

Mr. ROHRABACHER. No, it does not satisfy me.

Mr. CONYERS. And did you do anything else?

Mr. ROHRABACHER. We want to know exactly what this panel is all about to find out who is responsible for this type of—this committee.

Mr. CONYERS. Well, I can assure you this panel can't account to you for the liberals in the Clinton administration running amok. But who else?

Mr. ROHRABACHER. All right, I'll just give you one other example—

Mr. CONYERS. No. No, just a moment. I wanted you to name—

Mr. CANADY. I'm sorry, the gentleman's time has expired. There is a series—

Mr. CONYERS. You mean he can't answer the question?

Mr. CANADY. I'm sorry, there is a series of votes taking place on the House floor, if you did not hear the bells ringing. And we are about as far from the House floor as you can be and still be in the House complex.

Mr. FRANK. No further than we are from the subject of this hearing.

[Laughter.]

Mr. CANADY. Well, we can discuss who started that.

[Laughter.]

Mr. ROHRABACHER. Let me just say, Mr. Chairman, I already noted the situations—

Mr. CANADY. By unanimous consent, the gentleman will have 1 minute, 1 additional minute.

Mr. ROHRABACHER. OK. I have already noted the situation in San Francisco, where people who—

Mr. CONYERS. But I wanted names of people, Mr. Rohrabacher. You've only got 1 minute.

Mr. ROHRABACHER. How about the Secretary of HUD, for example?

Mr. CONYERS. Well, you name them. I don't know who they are.

Mr. ROHRABACHER. OK, I'm trying to tell you right now that the case was a very well-known case—

Mr. CONYERS. The Secretary of HUD. OK, who else?

Mr. ROHRABACHER. OK, well, we can go into—I could go into details of Waco, and Ruby Ridge, to talk about—

Mr. CONYERS. Well, we had 10 days of hearings, but who do you want to name there?

Mr. ROHRABACHER. I think the time was yielded to me to answer the question.

Mr. CANADY. Actually, it's the gentleman's time, but I understood that the gentleman from Michigan wished to allow you to answer the question.

Mr. ROHRABACHER. Right. It is the opinion of many people in this country, whether they are dealing with the IRS, or whether they are dealing with the Civil Rights Commission, or whether they are dealing with the BATF, that we have a situation where there are people in our Government who are out of control and we have to make sure that the message goes out to this Government that they cannot use the subpoena power, and the other powers of government—

Mr. CANADY. I'm sorry, the gentleman's additional time has expired. As I said earlier, there is a series of votes—the subcommittee—

Mr. CONYERS. Mr. Chairman, might I make an inquiry?

Mr. CANADY. Yes.

Mr. CONYERS. Are these witnesses coming back?

Mr. ROHRBACHER. I won't be able to come back. I'm sorry, Mr. Chairman.

Mr. CANADY. Pardon?

Mr. FOLEY. I'd like to go back to work. I was here to talk about—

Mr. CONYERS. You're at work, sir; this is where you work.

Mr. FOLEY. But if we talk about Ms. Peart, and why I came to testify, we'd—

Mr. CONYERS. You're on the job now.

Mr. CANADY. If you are unable to return, we would ask that you be willing to answer any written question that the members might have.

Mr. CONYERS. Unless you've got a job somewhere else?

[Laughter.]

Mr. CANADY. The subcommittee will stand in recess until the conclusion of the votes.

[Recess.]

Mr. CANADY. The subcommittee will come to order.

Ms. Mathews. Ms. Moore.

Mr. WATT. Mr. Chairman.

Mr. CANADY. Yes, Mr. Watt.

Mr. WATT. I wonder if I might be allowed to make a brief comment or two since I didn't get a chance to question Mr. Rohrabacher, and forewent my chance to question the first panel.

Mr. CANADY. Mr. Watt, you're recognized for 5 minutes.

Mr. WATT. Thank you. I just wanted to, and I'll try not to take 5 minutes—I don't think it will take that long to, first of all, give a couple reactions to Mr. Rohrabacher's comments.

First of all, the notion that government can in certain circumstances and is in some instances out of control, as he says, is neither a liberal nor a conservative philosophy. It is a philosophy that is shared by more than the far right. In fact, the thing that fascinated me most about Mr. Rohrabacher's comments was his notion that the FBI and the BATF and the Internal Revenue Service are somehow these tools of the liberal establishment. I have never quite envisioned either of those agencies as being liberal in the respect that I think of liberalism. So, but—and I just wanted the opportunity to point that out.

The second thing about his comments that I think were a little misleading have to do with the fact that the Civil Rights Commission, as I understand it, and I'm here to learn more about the work of the Civil Rights Commission and its status, but, as I understand it, the Civil Rights Commission is an independent agency. And the notion that it is somehow acting, whether it is doing good or whether it is doing bad set aside, is somehow acting at the behest of the Clinton administration I think needs to be clarified. Those two points I wanted to make.

On a more generalized basis, I want to thank you for having the oversight hearings and presume from the beginning that the purpose of these oversight hearings is honorable and not just an effort to demonstrate the chairman's power. I think there are some constructive things that can come out of this series of hearings that have to do with some divisions that really are at play in our society. And I hope we don't use this hearing to further widen that divide.

And I'll yield back.

Mr. CANADY. Thank you. The gentleman's time has expired.

Now we're moving to our second panel today. Mary Mathews was appointed Staff Director of the U.S. Commission on Civil Rights by President Clinton in May 1994. She has been with the Commission since 1988, serving in various capacities.

Also here today from the Commission is Stephanie Moore, Deputy General Counsel of the Commission. She joined the Commission in October 1994.

Will you both please stand and raise your right hand?

[Witnesses sworn.]

Mr. CANADY. Please be seated.

Ms. Mathews.

STATEMENT OF MARY K. MATHEWS, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY STEPHANIE MOORE, DEPUTY GENERAL COUNSEL

Ms. MATHEWS. Thank you, Mr. Chairman and members of the subcommittee. I am pleased to appear before you today to discuss recent activities of the U.S. Commission on Civil Rights. I would like to ask that my entire testimony be made a part of the record.

Mr. CANADY. Without objection, your testimony will be made a part of the record.

Ms. MATHEWS. Thank you.

Accompanying me is the Commission's Deputy General Counsel, Stephanie Moore.

The Commission is a bipartisan, independent factfinding agency charged with evaluating the status of civil rights and providing recommendations to the President and the Congress. The Commission is one of the smallest agencies in the Federal Government, performing our important mission with only 105 full-time equivalencies and an appropriation of \$9 million in fiscal year 1995. Our staff is dedicated to understanding and resolving the complex civil rights issues that threaten to divide us all.

The need for an independent, bipartisan Commission that can investigate emerging civil rights issues to ensure that all persons in this society have an equal opportunity to participate in the Nation's free enterprise system remains as strong as when the agency was established in 1957 in the Eisenhower administration. The Commission cannot at this juncture take a back seat. We must now, more than ever, play an active, independent role in guiding the debate on civil rights.

As I understand it, Mr. Chairman, the subcommittee would like to address three issues this morning: the voting procedures with respect to the Commission report entitled, "Funding Federal Civil Rights Enforcement;" the statutory requirement that the Commis-

sion complete annually one report monitoring Federal civil rights enforcement, and the Commission's recent hearing on "Racial and Ethnic Tensions in American Communities," which was held in Miami, FL. I'm pleased to explain the Commission's procedures relevant to these issues from my perspective as the day-to-day administrator of the Commission.

Because of the Commission's status as an independent agency, I should note that my statement does not reflect the views of the administration.

Let me first provide some historical perspective on the work of the Commission. Since its inception in 1957, the primary goal of the Commission has been to collect factual information concerning civil rights issues and to issue recommendations to the President and to the Congress. As stated by Chairman John Hannah at the Commission's first hearing in 1958 on voting rights in Alabama, and I quote, "The Commission was established in the hope that, through a dispassionate evaluation and appraisal of the facts, some sort of reason and light could be brought to bear upon problems of national importance which have up to now been frequently and passionately debated, but seldom soberly assessed."

Over the years, the Commission has provided evaluation and analysis of the facts with respect to a variety of pressing civil rights issues. In the late 1950's and 1960's, the Commission held hearings on voting rights and the administration of justice, highlighting for the first time the extent to which African-Americans were being denied the right to vote and subjected to violence and intimidation. In the 1970's, the Commission held extensive hearings on school desegregation and the resulting violence in cities all over the country. Similarly, in the 1980's, the Commission conducted a series of hearings on the enforcement of the Indian Civil Rights Act, and, in 1991, the Commission agreed to devote the majority of its resources to the study of the causes for racial and ethnic tensions in American society.

The hearing held in Miami was the sixth in a series of hearings exploring this issue. Previous hearing have been held in Washington, DC, Chicago, Los Angeles, and New York, and the final hearing in this project is scheduled for the Mississippi Delta in December of this year.

The procedures governing the development and execution of the Commission's program agenda are longstanding. The program planning cycle begins each year with a planning retreat in which the Commissioners vote on the projects to be undertaken by the Commission for the next 2 fiscal years. The selection of projects arises from proposals that have been prepared by the staff, provided to the Commissioners, and ideas generated by the Commissioners themselves.

Once a project proposal has been approved, Commission staff develop project designs which detail the scope, the methodology, and the resources of the project. The project design is then approved by the commissioners.

Once a project design has received Commissioner approval, the extensive preparation necessary for the execution of Commission projects is generally the responsibility of the Commission staff. The Commission's internal procedures regarding Commission projects

specifically delineate the process for Commission hearings, assigning to the Office of General Counsel responsibility for preparing and conducting Commission hearings.

Typically, the staff of the Office of General Counsel spend months preparing for each hearing. The preparation process involves extensive field work to ensure that the witnesses who appear before the Commission possess sufficient relevant factual information upon which to build a record. Staff review books, articles, reports, newspaper clippings, and other literature to identify potential witnesses. Staff also receive from the Commissioners recommendations for witnesses, and staff then interview all potential witnesses to determine the relevance and extent of their knowledge or information.

Once a witness list has been finalized, all persons living and working within the Commission's statutory subpoena range are served with subpoenas requiring their attendance and/or the production of documentation. A determination whether to subpoena the production of documentation is also based on the relevance and extent of the information available from each potential witness. Witnesses outside of the statutory subpoena range are invited to appear at the hearing and provide documents or other writings to the Commission.

At Commission hearings all witnesses are sworn and present testimony and authenticate documents provided for the record. Typically, witnesses provide an opening statement and then they respond to questions.

Because the Commission is a bipartisan factfinding agency, it is of the utmost importance that we have balanced hearings with witnesses offering different perspectives and opinions on the issues being considered. Only by soliciting testimony and evidence from all sides can the Commission engage in true factfinding.

Following a Commission hearing and the collection of documentary evidence, Commission staff analyze all testimony and evidence and draft a report with findings and recommendations which will be forwarded to the President and to the Congress.

As Staff Director, I oversee the preparation and production of all Commission reports. Once finalized by staff, these reports undergo internal legal sufficiency, and editorial review. Following these internal reviews, revisions are made and the report is sent to me for final approval prior to being forwarded to the Commissioners for review and acceptance.

Commission reports are considered and discussed by the Commissioners and are accepted by a majority of Commissioners voting so long as there is a quorum. Once a report is approved, it is printed and released to the public. We also routinely provide advance copies to the White House and to the Congress prior to official release of each report.

The ability to issue subpoenas for the attendance and testimony of witnesses or the production of written or other matter has been authorized by the Commission statute since its creation in 1957 and is crucial to our ability to gather facts effectively. In fact, President Eisenhower specifically rejected the option of creating the Commission by Executive order because it would lack the authority to subpoena witnesses, a power he deemed essential if the

Commission was to "be in a position where it could get all of the facts on top of the table."

There have been few challenges to the Commission's authority. In 1960, the U.S. Supreme Court held that the rules adopted by the Commission for the conduct of its hearings violate no constitutional right of any witness subpoenaed to testify at a Commission hearing. The Court's decision was rooted in its recognition of the Commission's factfinding and investigatory function. The Commission's subpoena authority has been challenged in the courts on only two other occasions, and in both cases the Court rejected the challenges and upheld the Commission's authority.

As indicated to you, Mr. Chairman, by Chairperson Mary Frances Berry's letter of September 18, 1995, the Commission, as a routine practice, subpoenas all witnesses within our jurisdictional limits for Commission hearings. This is not a new practice. At a 1962 Commission hearing on housing, health, employment, and the administration of justice, which was held in Memphis, TN, Commission Vice Chairman at that time, Robert G. Storey, explained, and I quote:

"May I emphasize—the fact that a witness has been subpoenaed does not mean that the witness would not have appeared voluntarily. In an effort to be as objective as possible, the Commission felt it would be preferable to subpoena everyone rather than to observe a distinction between a volunteer and a reluctant witness. I should also like to emphasize that our decision to follow this procedure had nothing whatever to do with conditions in Memphis. We followed this procedure in many other places."

This standard procedure has been followed by the Commission for decades. In fact, during its existence, the Commission has held over 60 hearings, at which we have heard from approximately 3,000 witnesses, most of whom were subpoenaed. The quality of our reports depends on our ability to solicit testimony from all persons with information relevant to our inquiry.

In deciding who and what to subpoena, we have been careful to weigh the Commission's factfinding needs against the legitimate concerns of some witnesses for their safety and well-being in appearing at a public hearing while avoiding first amendment infringements.

Accounts of our use of subpoenas for the Miami hearing indicate a number of misunderstandings and misperceptions that I want to address. First, we did not subpoena only witnesses representing a particular point of view or political advocacy. Having conducted hearings on highly-charged and contentious issues for many years, the Commission has adopted a policy that subpoenas are to be sent to all witnesses who reside or work within the 100-mile statutory limit of our authority. Those individuals who work outside the 100-mile limit and who, we believe, can make a significant contribution are invited to attend. This is the policy that we followed in Miami.

We have heard allegations that the Commission targeted witnesses who hold views opposed by the Commission. This is simply not true. For one thing, it is a fundamental principle of our approach to factfinding to probe all aspects of controversial issues. That is, we hear and assess all sides of the debate on such issues. For another, the Commission's requests for documentary evidence

are based on the staff's assessment of the potential value of requested documents to the legitimate needs of our investigation. They are not designed to be unnecessarily intrusive or burdensome, and they are certainly not designed to burden certain witnesses in favor of others. I believe these points will be substantiated by a careful examination of the subpoenas and a recognition of the wide range of views represented by the witnesses called to appear at the Miami hearing.

Additionally, we did not, as has been alleged, demand that any witness or organization produce membership lists or other such documents. As I mentioned above, we did not impose an unfair burden on any witness to produce documents, and we did not unfairly place greater production demands on advocates of one point of view over another.

As Chairperson Berry points out in her September 18, 1995, letter to you, Chairman Canady, "The Commission's independence from Congress and the President, so necessary for the integrity of its work, is not without supervision." Any witness may challenge a Commission subpoena in a court of law. They may do so directly, by seeking a court injunction or an order vacating the subpoena, or indirectly, by not complying with all parts of the subpoena and forcing the Commission to convince the court to enforce the subpoena. It is, therefore, the courts who can and should judge the legality of the Commission's subpoenas on a case-by-case basis, when in those rare instances witnesses believe our demands to be unduly onerous or intrusive.

Finally, but most importantly, the Commission was created for, and has been distinguished by, its independence from the Congress and the President. The Commission's independence was the cornerstone of its creation by the Eisenhower administration, and this independence has been reaffirmed by the courts, as well as by the Congress and the President, over the years. Chairperson Mary Frances Berry, in her September 18, 1995, letter to you, Mr. Chairman, stated, "It would be impossible for the Commission to pursue an inquiry and to reach unbiased conclusions if the Congress or the President oversaw the production of the facts."

I would now like to respond to concerns you have raised regarding the issuance of a monitoring report by the Commission. As you are aware, in 1991, the Commission's statute was amended to include the requirement that the Commission submit at least one report annually that monitors Federal civil rights efforts. The Commission's intended monitoring report for this year is entitled, "Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs." Staff completed this report, and I submitted it to the Commissioners for their consideration at the July 14, 1995 Commission meeting. Unfortunately, the Commissioners failed to approve the report at that meeting by a vote of 4 to 4. The Commissioners have subsequently initiated a process to begin reaching consensus on the report. As soon as the Commissioners reach a consensus and provide me with instructions regarding revisions, the report will be finalized and issued.

Finally, I would like to address the voting procedures surrounding approval of a Commission report on funding for Federal civil rights enforcement. Earlier this year, Commission staff completed

a report entitled, "Funding Federal Civil Rights Enforcement," which evaluated the resources provided for Federal civil rights enforcement over the last 15 years. The report was forwarded to the Commissioners during the week of the June 9, 1995, Commission meeting. At that meeting, the Commissioners agreed to conduct a telephonic poll vote on approval of the report, so that it could be provided to Congress prior to appropriation markups which had been scheduled for late June 1995. I provided the Commissioners with 5 days advance notice of the date the poll would be conducted.

On June 20, 1995, the date of the poll, a quorum of five of the eight Commissioners voted, and the report was approved 4 to 1. All Commissioners had a full opportunity to vote, and my office communicated with every Commissioner except for one, for whom messages were left at his customary number. In accordance with Commission practice, advance copies of the report were provided to Congress. Due to a printing problem, the final printed version of the report was not returned from the Government Printing Office until the end of September. We expect to provide the report to all Members of Congress by the end of this month.

Mr. Chairman, this concludes my opening remarks. I would ask that the Chairperson's September 18th letter to you and a June 21, 1995, memorandum from me to the Chairperson on the "Funding Federal Civil Rights Enforcement" poll vote be included in the record along with my testimony.

Mr. CANADY. Without objection, those items will be included in the record.

[The information follows:]



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

September 18, 1995

The Honorable Charles T. Canady
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
H2-362 Ford House Office Building
Washington, D.C. 20515

Dear Chairman Canady:

I am aware of your publicly expressed criticism of the Commission for directing subpoenas to certain individuals in Florida for our just concluded hearing on Racial and Ethnic Tensions. Apparently, in response, you have scheduled an oversight hearing, and the Commission's Staff Director has been asked for a variety of information including copies of all subpoenas for the production of documents issued by the Commission since January 1, 1990. I am complying with your requests by enclosing with this letter a copy of each subpoena duces tecum for each hearing. These are a matter of public record, and we are pleased to make them available to you.

However, I would like to take this opportunity to discuss an issue that has arisen from your criticisms of the subpoenas used in Florida and the nature of the planned oversight hearing as described in your letter of September 8, 1995. You have suggested that the Commission is using its subpoena powers to specifically "target individuals based on the content of their political advocacy." Nothing could be further from the truth. As a routine practice dating to long before my tenure as Chairperson, the Commission subpoenas all witnesses within our jurisdictional limits for Commission hearings. Consistent with this practice, in Miami witnesses engaged in political activity for and against Proposition 187 were subpoenaed and asked to produce documents.

The practice of subpoenaing all witnesses arose from experience. Many witnesses ask to be subpoenaed to protect them from employer disapproval or the opprobrium of peers for testimony on their version of the facts. Others, even government officials, have refused to give evidence concerning alleged abuses unless they are officially summoned. As a result, to insure cooperation from volunteers and for those witnesses who seek protection, the Commission has found that a routine subpoena of all serves a valid purpose.

As you know, the Commission by statute reports its findings to the President, the Congress and the public. I am sure you would agree that it would be impossible for the Commission to pursue an inquiry and to reach unbiased conclusions if the Congress or the President oversaw the production of the facts.

In developing his administration's proposal for the Civil Rights Commission, President Dwight Eisenhower explained, "I think it is time for us to have a bipartisan independent body which has [subpoena] authority and which can put the facts on top of the table relative to these issues." Every Congress since 1957 has acknowledged that the Commission is "an independent factfinding agency with a mission of appraisal of where we are in the field of civil rights and the direction in which we should head."

The Commission as the Supreme Court stated has no enforcement power. It "does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property." The Commission cannot "affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action."

The Commission's independence from Congress and the President, so necessary for the integrity of its work, is not without supervision. If any witness does not appear or submit materials in response to a summons, the Commission can do nothing except to ask that the courts review the matter and determine whether to order the witness to comply. As the Third Circuit Court of Appeals noted in upholding a subpoena directed by former Commission Chairman Arthur Flemming at the Philadelphia police in a Commission hearing concerning police brutality, the courts will determine "the relevance and need for the information sought." Judicial supervision makes it impossible for the Commission to "chill" any constitutionally protected activity by subpoenaing a witness.

The reality is that repeated attempts by members of Congress and Presidents have been made to "chill" the Commission's factfinding throughout its history. In the 1960's some members of Congress tried to prevent the Commission from questioning witnesses in the course of its inquiries concerning racial discrimination. Since that time, members of Congress have threatened to defund the Commission if it did not pursue an agenda they proposed. The Executive branch has tried to prevent the Commission from holding hearings which discomfited a particular administration and Presidents have fired members of the Commission who disagreed with their civil rights policies.


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Attacks on the Commission are one barometer of how controversial civil rights issues become. They also show how difficult it is for the Nation to achieve equality of opportunity for all Americans, without discrimination on the basis of age, sex, race, national origin, religion, or disability.

The Commission's full agenda includes Affirmative Action hearings scheduled for November and the last in a series of Racial and Ethnic Tensions hearings to be held in the Mississippi Delta in December. There is no way the Commission can perform its statutory mission without the power to summon the attendance of witnesses and the submission of documents. There is also no way the Commission can conduct its business in an unbiased manner if it adjusts the pursuit of the facts to please particular members of Congress.

Mr. Chairman, this episode has served to remind me of the importance of protecting and defending the independence of the United States Commission on Civil Rights. I know you share my concern. I look forward to the hearing on September 27, 1995.

Sincerely,



MARY FRANCES BERRY
Chairperson

cc: Vice Chairperson, Commissioners, and Staff Director
U.S. Commission on Civil Rights

Enclosures



UNITED STATES COMMISSION ON CIVIL RIGHTS

WASHINGTON D C 20425

OFFICE OF STAFF DIRECTOR

June 21, 1995

MEMORANDUM FOR MARY FRANCES BERRY
ChairpersonSUBJECT: Poll Vote on Funding Federal Civil Rights
Enforcement Report

This is to provide you with a written summary of the approval process for the report Funding Federal Civil Rights Enforcement. The report was approved 4-1, with 1 not voting, yesterday by the usual procedure utilized by the Commission. As you know, the Commission agreed at the June 9, 1995 Commission meeting to take a poll vote at a convenient time on this report, since the appropriations for these civil rights agencies would be subject to important Congressional action before the next scheduled Commission meeting.

I conducted the poll in accordance with Commission procedure, under which polls in between meetings are the responsibility of the Staff Director, as the full-time, day to day administrator of the agency. Because the Commissioners are part-time and may be at any geographical location, they are contacted by telephone to record their vote.

The Commissioners received this report two weeks in advance of the vote, and I provided 5 days notice of the date the poll would be conducted. As in other instances, individual Commissioners expressed a desire for a delay or made other suggestions which would have prevented the polling from occurring. However, the poll proceeded according to Commission policy that the Staff Director implements a Commission decision to poll unless prevented by lack of a quorum.

On June 20, 1995, polling day, a quorum of 5 of the 8 Commissioners voted. All Commissioners had a full opportunity to vote, and my office communicated with every Commissioner except one, for whom messages were left at his customary number. The majority who approved the report consisted of two Republican appointees and two Democratic appointees.

As you know, it is not unusual for a report to be approved by less than a majority of the total number of Commissioners. All Commissioners may not be in attendance at a meeting or poll vote, or some Commissioners may decide not to vote. All that is needed for the approval of a report is a quorum. Since 1985, there have been approximately 133 votes on Commission reports, State Advisory

Committee reports and statements of policy. Of those 133 votes, 92 were conducted with 1 or more Commissioners not voting, either because they were not present or because they chose not to vote, and 16 were approved by 4 or fewer Commissioners.

In accordance with usual Commission practice, advance copies of the report will be sent to the White House and to relevant congressional committees for their information. Due to expected press interest in the report, perhaps a press briefing would be useful.

I am pleased to report the Commission's positive action to you on this very important staff work product.



MARY K. MATHEWS
Staff Director

Ms. MATHEWS. I appreciate the opportunity to appear before you and explain these aspects of the Commission's operations. I hope that at the conclusion of this hearing we will have assured the members of the subcommittee as to the fairness and propriety of the Commission's use of its subpoena power. I also hope that, in considering this specific issue, you will bear in mind the importance of the work the Commission is doing to examine racial and ethnic tensions in American communities. In particular, I believe the hearing in Miami yielded a rich and balanced record on a number of key immigration issues and should result in a valuable report.

The Deputy General Counsel and I will be happy to answer any questions you may have.

[The prepared statement of Ms. Mathews follows:]

PREPARED STATEMENT OF MARY K. MATHEWS, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss recent activities of the U.S. Commission on Civil Rights. Accompanying me is the Commission's Deputy General Counsel, Stephanie Moore.

The Commission is a bipartisan, independent, factfinding agency, charged with evaluating the status of civil rights and providing recommendations to the President and to Congress. The Commission is one of the smallest agencies in the Federal government, performing our important mission with only 105 FTEs and an appropriation of \$9 million in fiscal year 1995. Our staff is dedicated to understanding and resolving the complex civil rights issues that threaten to divide us all. The need for an independent, bipartisan Commission that can investigate emerging civil rights issues, to ensure that all persons in this society have an equal opportunity to participate in our Nation's free enterprise system, remains as strong as when the agency was established in 1957 in the Eisenhower Administration. The Commission cannot, at this juncture, take a back seat. We must now, more than ever, play an active, independent role in guiding the debate on civil rights.

As I understand it Mr. Chairman, the Subcommittee would like to address three issues this morning: the voting procedures with respect to the Commission report entitled "Funding Federal Civil Rights Enforcement," the statutory requirement that the Commission complete annually one report monitoring Federal civil rights enforcement, and the Commission's recent hearing on Racial and Ethnic Tensions in American Communities which was held in Miami, Florida. I am pleased to explain the Commission's procedures relevant to these issues from my perspective as the day to day administrator of the Commission. Because of the Commission's status as an independent agency, I should note that my statement does not reflect the views of the Administration.

INTRODUCTION

Let me first provide some historical perspective on the work of the Commission. Since its inception in 1957, the primary goal of the Commission has been to collect factual information concerning civil rights issues and to issue recommendations to the President and to the Congress. As stated by Chairman John Hannah at the Commission's first hearing in 1958 on voting rights in Alabama, "[t]he commission was established in the hope that, through a dispassionate evaluation and appraisal of the facts, some sort of reason and light could be brought to bear upon problems of national importance which have up to now been frequently and passionately debated but seldom soberly assessed."

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in Miami was the sixth in a series of hearings exploring this issue. Previous hearings have been held in Washington D.C., Chicago, Los Angeles and New York, and the final hearing in this project is scheduled for the Mississippi Delta in December 1995.

COMMISSION PROCEDURES

The procedures governing the development and execution of the Commission's program agenda are longstanding. The program planning cycle begins each year with a planning retreat, in which the Commissioners vote on the projects to be undertaken by the Commission for the next two fiscal years. The selection of projects arises from proposals that have been prepared by the staff and provided to the Commissioners and from ideas generated by the Commissioners themselves. Once a project proposal has been approved, Commission staff develop project designs, which detail the scope, methodology and resources of the project. The project design is approved by the Commissioners.

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At Commission hearings, all witnesses are sworn and present testimony and authenticate documents provided for the record. Typically, witnesses provide an opening statement and then respond to questions. Because the Commission is a bipartisan, factfinding agency, it is of the utmost importance that we have balanced hearings, with witnesses offering different perspectives and opinions on the issues being considered. Only by soliciting testimony and evidence from all sides can the Commission engage in true fact finding.

Following a Commission hearing and the collection of documentary evidence, Commission staff analyze all testimony and evidence and draft a report with findings and recommendations which will be forwarded to the President and to Congress. As Staff Director, I oversee the preparation and production of all Commission reports. Once finalized by staff, these reports undergo internal legal sufficiency and editorial review. Following these internal reviews, revisions are made, and the report is sent to me for final approval, before it is forwarded to the Commissioners for review and acceptance. Commission reports are considered and discussed by the Commissioners, and are accepted by a majority of Commissioners voting, so long as there is a quorum. Once a report is approved, it is printed and released to the public. We also routinely provide advance copies to the White House and to the Congress prior to official release of the report.

SUBPOENA POWER

The ability to issue subpoenas for the "attendance and testimony of witnesses or the production of written or other matter" has been authorized by the Commission's statute since its creation in 1957 and is crucial to our ability to gather facts effectively.¹ In fact, President Eisenhower specifically rejected the option of creating a Commission by executive order because it would lack the authority to subpoena wit-

¹ 42 U.S.C. § 1975a(e)(2) (Supp. 1995). The power was expanded from a 50 mile radius to a 100 mile radius by the Civil Rights Commission Amendments Act of 1994. Pub. L. No. 103-419, 108 Stat. 4338 (codified at 42 U.S.C. § 1975a(e)(2) (Supp. 1995)).

nesses, a power he deemed essential if the Commission was to be "in a position where it [could] get all of the facts on top of the table."²

There have been few challenges to the Commission's authority. In 1960, the U.S. Supreme Court held that the rules adopted by the Commission for the conduct of its hearing violate no constitutional right of any witness subpoenaed to testify at a Commission hearing. The Court's decision was rooted in its recognition of the Commission's factfinding and investigatory function.³ The Commission's subpoena authority has been challenged in the courts on only two other occasions, and in both cases the court rejected the challenges and upheld the Commission's authority.⁴

As indicated to you, Mr. Chairman, by Chairperson Mary Frances Berry's letter of September 18, 1995, the Commission, as a routine practice, subpoenas all witnesses within our jurisdictional limits for Commission hearings. This is not a new practice. At a 1962 Commission hearing on Housing, Health, Employment and the Administration of Justice in Memphis, Tennessee, Vice Chairman Robert G. Storey explained:

May I emphasize—the fact that a witness has been subpoenaed does not mean that the witness would not have appeared voluntarily. In an effort to be as objective as possible, the Commission felt it would be preferable to subpoena everyone rather than to observe a distinction between a volunteer and a reluctant witness. I should also like to emphasize that our decision to follow this procedure had nothing whatever to do with conditions in Memphis. We followed this procedure in many other places.

This standard procedure has been followed by the Commission for decades. In fact, during its existence, the Commission has held over 60 hearings, at which we have heard from approximately 3,000 witnesses, most of whom were subpoenaed. The quality of our reports depends on our ability to solicit testimony from all persons with information relevant to our inquiry.

In deciding who and what to subpoena, we have been careful to weigh the Commission's factfinding needs against the legitimate concerns of some witnesses for their safety and well-being in appearing at a public hearing, while avoiding first amendment infringements. Accounts of our use of subpoenas for the Miami hearing indicate a number of misunderstandings and misperceptions that I want to address. First, we did not subpoena only witnesses representing a particular point of view or "political advocacy." Having conducted hearings on highly charged and contentious issues for many years, the Commission has adopted a policy that subpoenas are to be sent to all witnesses who reside or work within the 100-mile statutory limit of our authority. Those individuals who live or work outside the 100-mile limit, and who we believe can make a significant contribution, are invited to attend. This is the policy we followed in Miami.

We have heard allegations that the Commission targeted witnesses who hold views opposed by the Commission. This is simply not true. For one thing, it is a fundamental principle of our approach to fact finding to probe all aspects of controversial issues. That is, we hear and assess all sides of the debate on such issues. For another, the Commission's requests for documentary evidence are based on the staffs' assessment of the potential value of requested documents to the legitimate needs of our investigation. They are not designed to be unnecessarily intrusive or burdensome, and they certainly are not designed to burden certain witnesses in favor of others. I believe these points will be substantiated by a careful examination of the subpoenas and a recognition of the wide range of viewpoints represented by the witnesses called to appear at the Miami hearing. Additionally, we did not, as has been alleged, demand that any witness or organization produce membership lists or other such documents. As I mentioned above, we did not impose an unfair burden on any witness to produce documents, and we did not unfairly place greater production demands on advocates of one point of view over another.

As Chairperson Berry points out in her September 18, 1995 letter to you Chairman Canady, "The Commission's independence from Congress and the President, so necessary for the integrity of its work, is not without supervision." Any witness may challenge a Commission subpoena in a court of law. They may do so directly, by seeking a court injunction or order vacating the subpoena, or indirectly, by not complying with all parts of the subpoena and forcing the Commission to convince the court to enforce the subpoena. It is therefore the courts who can and should judge

²Hearing before the United States Commission on Civil Rights, *Hearing held in Corpus Christi, Texas* (August 17, 1976), transcript, p. 6 (statement of Chairperson Arthur Flemming).

³*Hannah v. Larche*, 363 U.S. 420, 441 (1960).

⁴See *United States v. O'Neill*, 629 F.2d 222 (3d Cir. 1980); in *Re Wallace*, 170 F. Supp. 63 (M.D. Ala. 1959).

the legality of the Commission's subpoenas, on a case-by-case basis, when in those rare instances witnesses believe our demands to be unduly onerous or intrusive.

INDEPENDENCE OF THE COMMISSION

Finally, but most importantly, the Commission was created for and has been distinguished by its independence from Congress and the President. The Commission's independence was the cornerstone of its creation by the Eisenhower administration, and this independence has been reaffirmed by the courts as well as by the Congress and the President over the years. Chairperson Mary Frances Berry, in her September 18, 1995 letter to you Mr. Chairman, stated "it would be impossible for the Commission to pursue an inquiry and to reach unbiased conclusions if the Congress or the President oversaw the production of the facts."

THE COMMISSION'S STATUTORY REPORT

I would now like to respond to concerns you have raised regarding the issuance of a monitoring report by the Commission. As you are aware, in 1991 the Commission's statute was amended to include the requirement that the Commission submit at least one report annually that monitors Federal civil rights enforcement efforts. The Commission's intended monitoring report for this year is entitled "Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs." Staff completed this report, and I submitted it to the Commissioners for their consideration at the July 14, 1995 Commission meeting. Unfortunately, the Commissioners failed to approve the report at that meeting by a vote of 4-4. The Commissioners have subsequently initiated a process to begin reaching consensus on the report. As soon as the Commissioners reach a consensus and provide me with instructions regarding revisions, the report will be issued.

COMMISSION REPORT FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT

Finally, I would like to address the voting procedures surrounding approval of a Commission report on "Funding for Federal Civil Rights Enforcement." Earlier this year, Commission staff completed a report entitled "Funding Federal Civil Rights Enforcement," which evaluated the resources provided for Federal civil rights enforcement over the last 15 years. The report was forwarded to the Commissioners during the week of the June 9, 1995 Commission meeting. At that meeting, the Commissioners agreed to conduct a telephonic poll vote on approval of the report, so that it could be provided to Congress prior to appropriations mark ups which had been scheduled for late June 1995. I provided the Commissioners with 5 days advance notice of the date the poll would be conducted.

On June 20, 1995, the date of the poll, a quorum of 5 of the 8 Commissioners voted, and the report was approved 4-1. All Commissioners had a full opportunity to vote, and my office communicated with every Commissioner except one, for whom messages were left at his customary number. In accordance with Commission practice, advance copies of the report were provided to Congress. Due to a printing problem, the final printed version of the report was not returned from the Government Printing Office until the end of September. We expect to provide the report to all members of Congress before the end of October.

Mr. Chairman, this concludes my opening remarks. I would ask that the Chairperson's September 18th letter to you and a June 21, 1995 memorandum from me to the Chairperson on the "Funding Federal Civil Rights Enforcement" poll vote be included in the record along with my testimony.

I appreciate the opportunity to appear before you and explain these aspects of the Commission's operations. I hope that at the conclusion of this hearing we will have assured the members of the Subcommittee as to the fairness and propriety of the Commission's use of its subpoena power. I also hope that, in considering this specific issue, you will bear in mind the importance of the work the Commission is doing to examine racial and ethnic tensions in American communities. In particular, I believe the hearing in Miami yielded a rich and balanced record on a number of key immigration issues and should result in a valuable report. The Deputy General Counsel and I will be happy to answer any questions you may have.

Mr. CANADY. Thank you, Ms. Mathews.

You were here when I made my opening statement, and you heard my expression of concern about the failure of the Civil Rights Commission to provide us with certain documents we have requested. I indicated that I would ask for the legal basis for your

withholding information from the committee. Could you give us the legal basis for the decision?

Ms. MATHEWS. Mr. Chairman, I have received your letter, a letter or two, and heard your opening statement on this point. And I am very pleased to have an opportunity—in fact, I hope to speak with the subcommittee staff in regard to this, and I was very—

Mr. CANADY. But my question is, what's the legal basis for your failure to comply? Because I understand we're going to continue to talk about this, but I am, quite frankly, astounded that you have refused to comply with our request, given the responsibilities of this subcommittee and the responsibilities of the Civil Rights Commission, and we've asked for the basis on which you're doing that. If there's some legal basis, some privilege that you think you can invoke, I'm interested in hearing about it from you. I've not heard any such explanation or justification for your failure to comply with the request. If you have one, tell me.

Ms. MATHEWS. Mr. Chairman, the independence of the Commission and the questions that you've asked speak directly to preparation of a Commission hearing. The independence of the Commission is such that we believe, myself and the staff believe that it is necessary for the Commission to operate in terms of preparing for a hearing without congressional oversight to the degree of your question.

Mr. CANADY. OK, you have no—do you have any legal authority for taking that position? Has that been—

Ms. MATHEWS. The legislative history on the Commission and its statutory mission I believe would provide an ample indication of the point I'm making.

Mr. CANADY. Let me ask you this: Has the Commission considered this issue?

Ms. MATHEWS. Mr. Chairman, your letters have been directed to me as Staff Director.

Mr. CANADY. Have you discussed this with any members of the Commission?

Ms. MATHEWS. I am appearing here in my capacity as day-to-day administrator of the Commission. I—

Mr. CANADY. Have you discussed this, this issue of failing to comply with our request for information, with any members of the Commission?

Ms. MATHEWS. I have not discussed this with any of the members of the Commission.

Mr. CANADY. OK, let me ask you this: Why is Ms. Chinn not here today?

Ms. MATHEWS. Ms. Moore, who is Deputy General Counsel, and myself are here to represent the Commission, and we believe that we—

Mr. CANADY. I understand that. I asked you why Ms. Chinn's not here.

Ms. MATHEWS. Mr. Chairman, I was hoping to answer your question, if I could just—

Mr. CANADY. I have a limited amount of time. So if you'd—

Ms. MATHEWS. All right.

Mr. CANADY [continuing]. Please not tell me things I already know that you've already pointed out. I can see the two of you here.

Ms. MATHEWS. Well, that was an introduction to my answer, and if I could proceed——

Mr. CANADY. Please do.

Ms. MATHEWS. Ms. Chinn and Ms. Moyano Yob, the two attorney advisors and civil service staff members were invited by you to testify, and Ms. Moore and I can provide any kind of answers that you might have. I do not believe that the other two individuals would have any additional comments that would be relevant.

Mr. CANADY. Although they—you say that although they were directly involved in the specific matter which we are inquiring into, when they were involved in questioning the individuals who have complained that they were harassed by the Commission? You're telling me they don't have information that would be relevant?

Ms. MATHEWS. I'm indicating that the information that you seek from the Commission, Ms. Moore, and I would be happy to provide for you today.

Mr. CANADY. In your testimony you stated—this is in your written testimony. I think you—am I wrong that you read your written testimony word for word? So there's really no difference between your written statement and your spoken statement; is that correct?

Ms. MATHEWS. There may have been a word or two.

Mr. CANADY. A word or two. OK, I just wanted to get that clear.

In your testimony you stated, "In deciding who and what to subpoena, we have been careful to weigh the Commission's factfinding needs against the legitimate concerns of some witnesses for their safety and well-being in appearing at a public hearing while avoiding first amendment infringements." What sort of first amendment infringements do you seek to avoid?

Ms. MATHEWS. That was meant to imply avoiding the allegations that have been made. The Commission does not infringe upon first amendment rights in use of its——

Mr. CANADY. I understand that it's your position you don't infringe and that you seek to avoid infringing first amendment rights. What sort of infringements do you seek to avoid? What—when you're deciding what to subpoena, who subpoena and what to subpoena, what considerations related to first amendment rights enter into your consideration?

Ms. MATHEWS. As Deputy General Counsel, I would like to ask Ms. Moore to respond to your question.

Mr. CANADY. Well, my time has expired. We'll have a second round here and we'll get back to that.

Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

You made a distinction in your statement about between enforcement and factfinding. Does the Civil Rights Commission have any enforcement authority?

Ms. MATHEWS. The Commission is not an enforcement agency. We are a bipartisan, independent factfinding agency charged with the mission of analyzing the status of civil rights throughout the country and reporting on issues of concern and recommendations that we might make for improvements to the President and the Congress.

Mr. WATT. So if you found—if the Commission made a study and found that there were really serious racial or ethnic, whatever,

kind of problems, the Commission would not have any authority to go and do anything about those problems other than make its report to Congress and to the President and let the process run its course; is that what you're saying?

Ms. MATHEWS. Yes.

Mr. WATT. OK. Were the two witnesses that Chairman Canady has referred to, who are not here today, Ms. Chinn and Ms. Yob, were they subpoenaed?

Ms. MATHEWS. They were not, nor was I, nor was Ms. Moore.

Mr. WATT. OK. All right, I don't think I have any further questions, Mr. Chairman.

Mr. CANADY. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

I first want to make three points before I get on with questions. The first is that, in reviewing the authorizing statute of the Civil Rights Commission, it's clear to me that Congress has not given the Commission any authority to investigate immigration issues, and I don't see anything in the statute pertaining to immigration.

Second, and perhaps most importantly, I think Congress has created a Commission to report on immigration issues, which is the U.S. Commission on Immigration Reform, chaired by Barbara Jordan. It's interesting to me that the Immigration Commission, Mr. Chairman, has no subpoena authority, and yet they are able to do an excellent job on a very sensitive subject without that particular authority.

I might have to also say that, having worked with the Jordan Commission, it, too, is an independent commission, and to my knowledge, it has never refused a request by any committee for either documents or witnesses.

And then the third point is that it seems to me that individuals who come together in a voluntary, private association with other individuals who have not been accused of breaking any law, but who are simply trying to express a public opinion on certain issues, should not find themselves threatened with a subpoena, as has been the case with the subject at hand. And it's just incredibly ironic to me that a commission, an independent commission that is supposed to be protecting our civil rights is actually perhaps abusing the civil rights of others, and certainly could be accused of intimidation. I just find that absolutely astounding, to tell you the truth.

Mr. Chairman, before I get to my questions, I'd like to encourage you—and this is maybe to follow up on Mr. Watt's question—to use the subpoena power of this subcommittee to obtain the witnesses and the documents that you referred to that have been withheld from us.

Ms. Mathews, you said a while ago that you felt the Commission had the right to determine what's relevant in presenting either individuals or documents or witnesses to this subcommittee. I want to give you a chance to either retract that or to explain it, because I have never heard that in my years in Congress, and I doubt that any other Member of Congress has ever been in the position where a Commission created by Congress has taken upon itself the power to withhold documents or witnesses on the basis of what it thinks is relevant.

Ms. MATHEWS. Mr. Smith, I'd be glad to respond to your question, if I might start with some of your opening remarks and get to your last point. The Commission has been exploring, as I indicated in my testimony, the issue of racial and ethnic tensions throughout the country, and we have visited a number of cities prior to going to——

Mr. SMITH. I'm not interested in that. I'm interested in your responding to my question.

Ms. MATHEWS. Well, if I could just finish my sentence, it would be at least illuminating——

Mr. CANADY. But if the gentle——

Mr. SMITH. Yes, I'll be happy to yield, Mr. Chairman.

Mr. CANADY. You should answer the questions that are directed to you.

Mr. WATT. Mr. Chairman, in fairness to the witness, she's trying to answer the question and you all don't like the answer she's given. So——

Mr. CANADY. The gentleman will suspend. The gentleman will suspend.

Mr. WATT. But I don't think we ought to badger witnesses——

Mr. CANADY. There's a limit—no, we're not badgering——

Mr. WATT [continuing]. Who come before this committee.

Mr. CANADY. The gentleman will suspend. We're not badgering witnesses, but the witnesses are directed to answer the questions that are asked of them. There's a limited amount of time for the members to ask questions, and you should respond to the questions that are asked.

Ms. MATHEWS. Thank you, Mr. Chairman.

Representative Smith, the point that you were driving at at the end of the comments you made, the question, as I recall, was in regard to the reason that I stated that the Commission would, and the staff—I'm speaking on behalf of the staff; I need to emphasize that—did not feel it appropriate to provide answers to the type of questions that Mr. Canady is referring to, and these questions speak to the heart of the Commission's preparation process, preparation for a hearing.

Mr. SMITH. Maybe I misunderstood you. I understood you to say that there were two individuals who had been asked to testify today who had refused to be here because you didn't consider it to be relevant to what was going on, and that, furthermore, there were reports that we requested that were also denied to this subcommittee because you did not feel they were relevant.

Now I'm just simply asking you, when in the history of this Congress has a Commission created by Congress been allowed to determine what's relevant or irrelevant when it comes to official reports and witnesses who are members of that Commission or associated with that Commission?

Ms. MATHEWS. I can't speak for what has occurred in the history of the Congress——

Mr. SMITH. OK, well, then, would you at least admit that this is unprecedented?

Ms. MATHEWS. I can't speak for what has occurred in the history of the Congress. I can speak for the fact that in my tenure with

the Commission on Civil Rights since 1988 an oversight Chair has never inquired about these particular—

Mr. SMITH Let me go to my question, because I think there's a simple remedy, and that's for this subcommittee to subpoena the witnesses and subpoena the documents.

Mr. Chairman, I'm looking forward to many rounds of questions.

Mr. CANADY. Yes, we'll be having several rounds.

Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Ms. Mathews, I am very concerned about your statement that your lack of cooperation with this subcommittee is related to the independence of this Commission. This Commission was established by statute adopted by the U.S. Congress. This Commission is comprised of members half of whom are appointed by the U.S. Congress. This Commission is fully funded by the taxpayers of this country through appropriations from the U.S. Congress. Your salary, the salary of Ms. Moore, the salary of the two individuals who are not appearing today are paid for by the taxpayers of this country. And it is inconceivable to me that you would attempt to obstruct this committee finding out whether or not the Commission is duly carrying out its responsibilities, its statutory responsibilities.

Now how is it possible that the way in which you prepare to hold hearings is not of interest to this committee when, obviously, one of the underlying concerns, based upon the testimony of Members of Congress and others, is that your Commission is abusing its subpoena process? And we want to know why and for what purpose. And how you prepared for that hearing is definitely directly related to our oversight responsibility as a committee, and I'd like to know why it is that we should not have the ability to hear from employees of your Commission, employees of the Federal Government, as to the way they went about doing that.

Ms. MATHEWS. Mr. Goodlatte, I, obviously, don't agree with your characterization. I do not believe that my comments have had any relationship to obstructing. I have offered—

Mr. GOODLATTE. We're looking for two witnesses that you did not, as the Staff Director of this Commission, deem appropriate to provide to the elected representatives of the U.S. people. Why is it that you would not bring those witnesses forward to testify before us today, and why is it, my underlying question, not relevant to the work of this committee to find out how your Commission goes about preparing for publicly taxpayer-funded hearings?

Ms. MATHEWS. Mr. Goodlatte, the information that you, or any other member of the subcommittee, might be interested in with regard to the Miami hearing, Ms. Moore and I would be more than happy to answer.

Mr. GOODLATTE. Why would not the two employees of the U.S. Government who are directly involved in preparing for that hearing, whose intent, whose motives, whose purposes are of interest to this committee, not be relevant to what this committee needs to know? Why are they not being made available, and why are you not answering the written questions and requests for production of documents that you've received related to a public purpose paid for

by the taxpayers that has been called into question by other Members of Congress and by citizens of this country?

Ms. MATHEWS. All I can do, Mr. Goodlatte, is indicate again that the independence of the Commission and its preparation for hearings is such that to respond to the type of questions that were in Mr. Canady's letter would get right to the heart of the Commission's independence, and the reason it was created by Congress was to look at these issues with an independent opportunity.

Mr. GOODLATTE. Well, we certainly want you to look at issues that are relevant to your charter, and we want to know how you are going about doing that. And when it appears that you may have abused your statutory authority, we want to know why and we want to know how you went about making the determination that you should ask somebody—in fact, not ask them, subpoena them, require them to appear before the Commission under questionable circumstances. And you still have not given this committee the answer to the underlying question, which is, why are you not coming forward and answering legitimate questions about how a government agency functions?

Ms. MATHEWS. The——

Mr. GOODLATTE. You don't have any——

Ms. MATHEWS. The information we have provided already to the subcommittee has been voluminous in response to the questions in regard to procedure. Copies of all the subpoenas issued in Miami have been provided to the subcommittee, along with the duces tecum addenda in the cases where there was such. We've provided extensive information, and we'd be glad to sit down and discuss this further to try to work out——

Mr. GOODLATTE. That's why we're here right now, and you have a responsibility to report to the U.S. Congress when you are asked questions about how your agency is functioning. So I would second the recommendation of the gentleman from Texas that we do subpoena these documents and that we do subpoena the witnesses, and that we get on with this because you are, in fact, attempting to protect your agency from the oversight responsibility of the Congress.

Thank you, Mr. Chairman.

Mr. CANADY. Thank you.

Let me just follow up on that. It's been suggested by a couple of members of the subcommittee that we subpoena the Commission to obtain the presence of the witnesses that we seek and the information that you have refused to provide. It was the Chair's desire to avoid that sort of action. I don't believe that should be necessary. If we were trying to get information from a private party, perhaps, but from a governmental entity whose budget is funded by this Congress, it seems to me to be a step that we should never have to take.

Let me ask you this: Did you seek counsel from any lawyer regarding your refusal?

Ms. MATHEWS. I have discussed the situation with the Deputy General Counsel who is an attorney.

Mr. CANADY. And were you given an opinion by the—by counsel that you had a legal basis for the decision you made?

Ms. MATHEWS. I was.

Mr. CANADY. Would it be your intention to refuse to comply with any subpoena which we issue seeking the same information which we had previously sought and the attendance of the same witnesses which we've sought to have here?

Ms. MATHEWS. Mr. Canady, I am very anxious to be——

Mr. CANADY. Do you believe that you would have a legal basis—did the counsel give you an opinion that you would have legal grounds for refusing to comply with the subpoena or seeking to have a subpoena quashed?

Ms. MATHEWS. I'm trying to answer your question, Mr. Canady. If a subpoena is issued by this subcommittee, we would have to look and see what the wording would be of it. It's very difficult, if not impossible, for me to answer your question without seeing what you would subpoena.

Mr. CANADY. I'm telling you we would subpoena the same things we've asked for, and I think you've read that.

Ms. MATHEWS. I have read the exact—I have it in front of me, in fact, the memorandum or the letter that you sent to me, and it's dated October 4, with these particular questions.

Mr. CANADY. Well, are you telling me you really haven't considered how you would deal with a subpoena?

Ms. MATHEWS. I have not because I am not faced with——

Mr. CANADY. Let me go back to the question I had asked previously about the statement you made in your testimony regarding the Commission's effort to avoid first amendment infringements. You had indicated that counsel, Ms. Moore, could address that question.

Ms. Moore, what's your—what do you have to say about the efforts that the Commission takes to avoid first amendment infringements? What sort of infringements are referred to in the testimony?

Ms. MOORE. Thank you, Mr. Canady. We endeavor to be sensitive to all rights when issuing subpoenas, but I would like to take this opportunity to explain for you how the Commission operates and the reason for our subpoena power. There has been an abundance of——

Mr. CANADY. No, I'm sorry, unfortunately, we have a limited amount of time today——

Ms. MOORE. I understand that.

Mr. CANADY. We have given you an—we've allowed you to make an extended, Ms. Mathews, to make an extended opening statement. I need for you to answer the questions I direct to you——

Ms. MOORE. For example, Mr. Canady, we do not subpoena membership lists of organizations, which would be a clear violation of the first amendment.

Mr. CANADY. OK, are there any other things you seek to avoid in your factfinding activities that would implicate first amendment rights?

Ms. MOORE. Our process is one whereby we issue broad-based subpoenas and rely upon the witnesses to whom those subpoenas have been issued to register any objections with us. That has been our longstanding——

Mr. CANADY. OK, so——

Ms. MOORE [continuing]. Process, and it was followed in——

Mr. CANADY. OK, so the comment in your testimony, "while avoiding first amendment infringements," simply refers to avoiding issuing subpoenas for membership lists of organizations? Is that all that refers to?

Ms. MOORE. That was not my response.

Mr. CANADY. What else does it refer to?

Ms. MOORE. It refers to clear violations of the first amendment.

Mr. CANADY. What—well, like what? Give me some other examples. You've given me one example.

Ms. MOORE. That's the one that I can bring to you right now.

Mr. CANADY. You can't think of any others?

Ms. MOORE. No.

Mr. CANADY. Well, I would think that if you're the counsel with responsibility for ensuring that those sorts of concerns are addressed, that you might be able to think of something else.

Ms. MOORE. Well—

Mr. CANADY. I mean, I'm sorry to be surprised, but it does, quite frankly, surprise me.

Ms. MOORE. Well, Mr. Chairman, if you have another first amendment concern that you think are raised by the issuance of administrative subpoenas, I would certainly respond to—

Mr. CANADY. Let me ask you this: Do you think that the issuance of subpoenas can—to individual citizens who are involved in political activities can have a chilling impact on their expression of their first amendment rights?

Ms. MOORE. No, I do not. I think that the—

Mr. CANADY. Are there no circumstances under which the subpoena power can—the exercise of the subpoena power can have that chilling effect?

Ms. MOORE. Mr. Chairman, the point of subpoena power is to compel unwilling witnesses. That was—that mandate is given to us in our charter by Congress. There's no need to subpoena. We have used that as a practice—

Mr. CANADY. I understand as a practice you subpoena willing witnesses.

My time has expired for this round. We'll go to Mr. Watt.

Mr. WATT. Mr. Chairman, I don't have any questions of this witness, these witnesses, but I would say that these issues are not nearly as clear as you all are trying to make them appear.

If we're talking—first of all, on the question of the two employees who are not here today, both of whom are civil service employees, if you issued a subpoena—and I'm particularly directing this to Mr. Goodlatte—if he issued a subpoena for employees in my office whose salaries are paid by the Federal Government, I would have a serious question about whether a nonpolicy-setting—

Mr. GOODLATTE. Would the gentleman yield?

Mr. WATT [continuing]. Employee—just let me finish making my point, and I'd—and I don't mean to have—to imply that I have thought this all the way through. I just want to make clear that it's not nearly as slam-dunk a case as you all make it sound.

I'd have serious reservations—

Mr. CANADY. Would the gentleman—if the gentleman would yield—

Mr. WATT. Would you mind if I finished? I mean, I'm happy to yield, and I'll ask you for some more time and yield to you, too.

But if you issued a subpoena for an employee in my office, it would seem to me that it would be reasonable for me to say, "Look, I'm the policy-setting person in my office. I set the policies. These employees report to me," and even if they were willing to appear, it might be reasonable for me to say no. Now I'm not an expert on this.

Second of all, it seems to me that directing a series of requests to the staff of this Commission in a time frame where the Commission itself does not have the opportunity to make a decision about what documents are appropriate for production, for the counsel and the staff, even the head of the—the day-to-day head of the Commission to respond to, strikes me as being a little unfair, you know. And Ms. Mathews, to her credit, has said, "Look, I have had to make this judgment. This is not a Commission decision. It may be that the Commission makes a different decision," but it is certainly rational and reasonable for these people to say, "Look, we're an independent body. Our charge is to investigate these things and make reports to the Congress, and to the extent that you come and second-guess every time we try to investigate somebody or every witness we subpoena, or whatever, you are undermining our ability to do the job that you have—to fulfill the charge you have given us," and there is somewhere in there where we step across the line. Now maybe we—I don't know where that line is, but the point I make is I hope you all have thought through a little bit more carefully than I—it seems to me you have—the implications of what you're saying. You might be right that both of those civil service employees should have been here today, that all of the documents that the chairman, without any consultation with the rest of the members of the committee, I would say, said, "Give them to me"—maybe, you know, maybe you're not over the line, but it's not—it's not as clear to me as it is to you.

And I'm happy to yield to Mr. Goodlatte.

Mr. GOODLATTE. I thank the gentleman for yielding.

The first point I'd like to make is that if we, as a Congress, did not exercise our subpoena power over the executive branch and independent agencies, going right down to the level of civil service employees, including the fellow who set up the recording system in the White House during the Nixon administration, we would not have found out a whole lot about that particular set of circumstances, coming from that employee who clearly was not a policymaker.

Secondly, I would never deem to exercise a subpoena power over the employees of another Member of Congress unless it involved the Ethics Committee investigating something on the part of that Member of Congress. It's entirely different than—

Mr. WATT. But it was the part of the—

Mr. GOODLATTE [continuing]. Our oversight responsibility with this committee.

Mr. WATT. It was the part of your comments that had to do with the fact that they are paid by the Federal Government. I mean, all of us are paid by the Federal Government.

Mr. GOODLATTE. I think that that's a compelling reason for the employees of an agency that are requested by the Congress to appear and answer the questions.

And, finally, the testimony has already been that this staff has not brought this request, serious request from a committee of the U.S. Congress, to the Commission, even though this request has now been pending for 6 weeks.

Mr. CANADY. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

I'd like to proceed now to some questions about the specific subpoenas that were issued to the three individuals, JoAnn Peart, Rob Ross, and Enos Schera, if I'm pronouncing those names correctly.

The first question is, who made the determination to issue the subpoenas?

Ms. MATHEWS. The Commission procedure in regard to who makes a determination is a complicated question, and I would appreciate having an opportunity to elaborate a little bit on this.

Mr. SMITH. Well, rather than go through the details of the process then, just give me the name of the individual who makes that decision.

Ms. MATHEWS. It's not just one individual, Mr. Smith.

Mr. SMITH. OK, is it a vote or is it a joint decision? How is that made?

Ms. MATHEWS. The determination starts off—I need—I need at least an opportunity to respond, and it's going to be a couple of sentences here.

Mr. SMITH. OK.

Ms. MATHEWS. The determination starts off with a background literature review which the staff does, looking for organizations, individuals, who are prominent in the field under inquiry, who have made statements, who have positions developed, et cetera.

Mr. SMITH. That wasn't my question, as to how you decide who to subpoena. My question is, who makes a decision to subpoena those individuals?

Ms. MATHEWS. The questions are very directly related.

Mr. SMITH. Well, OK, who is the—what is the name of the person that, for instance, made the decision to subpoena Ms. JoAnn Peart, for example?

Ms. MATHEWS. All of the witnesses—the question that I'm answering would apply to all witnesses, Ms. Peart and all the others for the Miami hearing and for any hearing, for that matter. I'll summarize it this way: the staff in the Office of General Counsel develop possibilities based on literature review, pre-interviews and other types of exploration. The General Counsel or the Deputy General Counsel provides then a recommendation to me, and I provide a recommendation to the Chair. The Chair signs all the subpoenas.

Mr. SMITH. So recommendations go from the General Counsel to you and from you to the Chair, and then the Chair makes the final decision?

Ms. MATHEWS. The Chairperson's signature is on all the subpoenas for the Commission on Civil Rights.

Mr. SMITH. OK. Has the Chair ever failed to subpoena anyone whom you did not recommend?

Ms. MATHEWS. I can only speak in my experience as Staff Director, which has been about a year and a half.

Mr. SMITH. Right.

Ms. MATHEWS. And for the particular hearing you're speaking about, for Miami, the recommendations that I made—

Mr. SMITH. OK.

Ms. MATHEWS [continuing]. Those subpoenas were signed.

Mr. SMITH. OK. Now the recommendations that the General Counsel made to you, did you, in effect, sign off on those? So that I'm trying to get to the source. Is the source the General Counsel?

Ms. MATHEWS. I approved the recommendations—

Mr. SMITH. OK.

Ms. MATHEWS [continuing]. That were made to me by the Deputy General Counsel.

Mr. SMITH. OK. And maybe that's someone we need to make sure testifies as well, but to the best of your knowledge, why would—

Mr. CANADY. Mr. Smith, that's Ms. Moore. She's the Deputy General Counsel.

Mr. SMITH. Oh, pardon me. Ah, sitting right next to you. OK, then let me—

Mr. CANADY. I think it's important to understand there is no General Counsel; there's a Deputy General Counsel.

Mr. SMITH. Deputy General Counsel, OK.

Ms. Moore, then let me direct my questions to you just for a minute, and that is, how did you determine to subpoena the three individuals whom I have just mentioned?

Ms. MOORE. Well, again—

Mr. SMITH. In other words, they're not experts, as I understand it. What was there about them that made you want to subpoena them?

Ms. MOORE. Well, no, they—OK, let me approach it this way: the three persons to whom you're referring are leaders of organizations in the community. As leaders of organizations in the community, we did—we were interested in whatever information they could bring to bear to our investigation of racial and ethnic tensions.

Mr. SMITH. OK. Now let me—let me follow up on that real quickly. These are citizen organizations—citizen organizers of an effort to reform immigration laws, or whatever it might be. OK, what was it that you thought they might say or information they might give you? What was of interest to you?

Ms. MOORE. Well, again, we attempt to, in our hearings, to pursue a diversity of ideas. We want diverse positions on the underlying facts. We felt that they could give us information, each of these three individuals—

Mr. SMITH. Yes, what information were you looking for?

Ms. MOORE. We felt that they could give us information on the potential impact of the policies that they supported on racial and ethnic tensions. And, indeed, during the course of interviews, they provided information that convinced the staff and me that they could provide us with additional information—

Mr. SMITH. Did you at any point consider that you were subpoenaing individuals on the basis of their political views?

Ms. MOORE. Well, again, in the past and from 1957 until present, the Commission has pursued a practice of subpoenaing or inviting

community leaders. Indeed, for the Miami hearing four Commissioners recommended that we contact and interview members from a variety of political organizations for participation in that hearing.

Mr. SMITH. OK, let me go back then—

Mr. CANADY. We're going to have another round, if—

Mr. SMITH. Oh, I didn't see the red light on. All right. Could I just ask one more question or would you really prefer that I wait? I'll wait. You've been hard on yourself; I'll be glad to wait until the next round.

Mr. CANADY. OK, Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, I yield to the gentleman from Texas.

Mr. SMITH. Oh, real quickly, Ms. Moore, did you unilaterally decide or determine which community leaders to subpoena without any consultation with the members of the Commission?

Ms. MOORE. Mr.—Mr. Smith, our procedure is that the Commissioners approve a project, a hearing project. The Office of General Counsel is then committed with the responsibility to conduct—

Mr. SMITH. I've got lots of questions about all that, and I'll come back, and let me yield back to Mr. Goodlatte. I don't want to take up his time.

Mr. GOODLATTE. Thank you.

Ms. Moore, I'm troubled. Your policy seems to have an inherent flaw in it that's going to get you into a lot of trouble, and that is this: you have a subpoena power and you've also testified that, as a matter of course, you try to bring people into these hearings with a diversity of viewpoints. It seems to me that you put those two things together and you're going to be subpoenaing people to come in because of their views, because of their particular way of expressing their first amendment rights and not limiting your subpoena authority to simply bringing people before the Commission who you need to question because of actions that they may have taken or incidents that they may have awareness of related to civil rights—

Ms. MOORE. Mr. Goodlatte, we—

Mr. WATT. Would the gentleman yield?

Mr. GOODLATTE. Well, let me let her answer the question. Then I'll yield to you.

Ms. MOORE. Well, I'm not sure there was a question there, but we do not—we are not an enforcement agency. We do not only investigate allegations of discrimination against particular organizations. That is not the charter of the Civil Rights Commission. What we are charged to do is to investigate problems of discrimination in a particular area, and with respect to immigration, we were not looking at the issues that the Commission on Immigration Reform examined; we looked to determine whether immigration policies were, indeed, causing or exacerbating or enhancing racial and ethnic tensions in the Miami area.

Mr. GOODLATTE. Is it your position that anybody whose opinion you want to have you can subpoena them and force them to come before your Commission and give their opinion?

Ms. MOORE. It is not an issue of opinions. It is an issue—these are not just individual citizens, and I will respond—

Mr. GOODLATTE. Where does Ms.—maybe I should ask this of Ms. Mathews. Where does your statement that you want to have a variety of viewpoints expressed come into the need of the Commission to exercise the subpoena authority to have those opinions expressed?

Ms. MATHEWS. A variety of opinions on the facts relevant to the issue under inquiry is the point that I was making, Mr. Goodlatte.

Mr. GOODLATTE. And how far afield do you go in terms of—I mean, do you say, “We want to have the facts on immigration in the United States. Therefore, we can call anybody we want to to come in and testify on immigration and use our subpoena power and ask them to produce information,” and so on, regardless of the fact of whether or not they have done anything that would indicate that they violated any civil rights of anybody in this country?

Ms. MATHEWS. The selection for witnesses is not based on who might have violated someone’s civil rights. It’s based on individuals who have information pertinent to the inquiry under hand, and the three individuals that Mr. Smith mentioned are leaders of organizations in Florida on the inquiry that prompted us to explore immigration as it relates to racial and ethnic tensions.

Mr. GOODLATTE. So you’re concerned about immigration related to racial tension. You think that by itself is premise to call in someone and ask for their—and require their testimony, when all they have done is been involved in expressing their first amendment rights to express their opinions on the issue of immigration by having taken a leadership position in an organization related to that?

Ms. MATHEWS. An individual’s views are very important to us, and how they obtain those views, and in regard to the leadership role—

Mr. GOODLATTE. Excuse me.

Ms. MATHEWS [continuing]. That these particular individuals have—

Mr. GOODLATTE. An individual’s views?

Ms. MATHEWS. Yes.

Mr. GOODLATTE. Are very—so you think you can subpoena in to hear their views, to require them to make expressions regarding their first amendment right of free expression or the first amendment right not to express their views?

Ms. MATHEWS. We are exploring the situation. This is not the way that you have characterized it. We are exploring various views as a means of developing the final outcome of the Commission’s report, which would include analyzing, testimony, documents, and coming up with recommendations for improving racial and ethnic tensions throughout the country.

Mr. GOODLATTE. Why not just invite—

Ms. MOORE. May I respond?

Mr. GOODLATTE. Yes, but let me ask you this question first? Why not just invite people who want to come in and express their views?

Ms. MATHEWS. Mr. Goodlatte, the characterization that I was leading towards, referred to earlier, is that these three individuals, I will repeat, are leaders of organizations. They are not just three individuals with views. They have organizational leadership positions.

Mr. GOODLATTE. Mr. Chairman, my time has expired, but Mr. Watt was kind to yield to me before, and I'd ask unanimous consent for me to be allowed to yield to him for the point that he would make.

Mr. WATT. No, I won't take your time. That's fine. I appreciate the gentleman's offer.

Mr. GOODLATTE. Thank you.

Mr. CANADY. All right. Let me go back to a line of questioning I was pursuing earlier on the issue of first amendment infringements that you seek to avoid. Have you been able to think of any others since I first asked that question other than this business about membership lists?

Ms. MOORE. I haven't attempted to think of any others during that time, Mr. Canady. I was paying attention to the other questions.

Mr. CANADY. OK. So you still can only think of that one example?

Ms. MOORE. Again, I have not given any other thought to the—

Mr. CANADY. Well, I'm asking you to think now. Can you—you still can't think of any other?

Ms. MOORE. No, I can't.

Mr. CANADY. OK, let me ask you again, do you believe that there are any circumstances under which the issuance of a subpoena could have the impact of chilling the expression of first amendment rights by the individual who's subjected to the subpoena?

Ms. MOORE. Mr. Canady, I believe the mere issuance of an administrative subpoena does not chill any first amendment rights.

Mr. CANADY. Under no circumstances would you do that?

Ms. MOORE. The process that is involved here, once a subpoena is issued, we provide the witnesses with every opportunity to register any concerns they may have. A letter is written to them. The face of the subpoena provides them with the name of the person to contact in our agency if they have any concerns. In this particular situation, once the concerns were communicated, albeit to the press, we accommodated that concern.

Mr. CANADY. OK, that's very interesting. You say the concerns were communicated to the press, and in a letter which Chairperson Berry wrote to Ms. Peart, Mr. Ross, and Mr. Schera informing them that she would make "no effort to enforce the subpoena for their attendance," she stated that she had learned that they did not wish to testify from press accounts.

Now, Ms. Mathews, when Congressman Foley wrote to you with Ms. Peart's concern that she was being forced to testify against her will, did you pass that information on to Dr. Berry?

Ms. MATHEWS. When Congressman Foley wrote to me about Ms. Peart's concern, is that your question?

Mr. CANADY. Yes, did you pass that along to the Chairperson?

Ms. MATHEWS. I responded myself. No, I did not. I sent a letter back, as I recall, to Congressman Foley.

Mr. CANADY. So that information was not passed along to the Chairperson, who had signed the subpoena?

Ms. MATHEWS. I don't believe so. I do not recall that I did that, no.

Mr. CANADY. OK, let me—let me ask you this: now if I—when I read the letter that Chairperson Berry sent to the individuals explaining that they would not have to testify, in effect, that the subpoena would not be enforced—

Mr. WATT. Mr. Chairman, might I have a copy of that letter you're referring to?

Mr. CANADY. Well, I'm sorry, any of this information would be available to your staff, and I—

Mr. WATT. Well, I don't even know what letter you're referring to. It would be helpful if I could have a copy of it. I—

Mr. CANADY. Well, we'll endeavor to give you a copy. I don't have one in my hand right here. This is—you're referring—

Mr. WATT. I'm referring—

Mr. CANADY. There's a couple different letters. I've referred to a letter from Congressman Foley to—

Mr. WATT. It would be helpful for the committee members to have all of them, I guess, but—

Mr. CANADY. Your staff has been provided with all this information. I'm sorry that—you might want to consult with your staff about that.

Mr. WATT. Mr. Canady, I'm not trying to confront you about the issue. I apologize for not having it in front of me. All I was trying to do was get a copy of the letter, and this notion that you and I have to be in conflict every time a request is made, I mean, goes beyond the regular protocol of this committee.

Mr. CANADY. That's certainly not my desire.

Mr. WATT. Let's cool it then.

Mr. CANADY. Well, I think that we'll certainly—

Mr. WATT. I'm not angry at you. I mean, you know, you act like you're angry about something today.

Mr. CANADY. No, sir, I'm not angry; I'm trying to ask questions of the witness, and I would prefer not to be interrupted—

Mr. WATT. I ask unanimous consent that the gentleman be given whatever time, the minute that this exchange has taken, back to his time. I'm not trying to deprive you of the right to ask the witnesses.

Mr. CANADY. Thank you.

Mr. WATT. I'd like to be intelligently informed about what you're asking them about. That's all I'm asking.

Mr. CANADY. I certainly appreciate the gentleman's concern.

Let me go back to the question concerning the letter that Chairperson Berry wrote to the individuals informing them that the subpoena would not be enforced. Reading that letter, it almost gives the impression that this was more or less a misunderstanding, that the Commission had not understood that these individuals did not wish to testify, that they were unwilling to testify unless they were compelled to do so. Was there just a misunderstanding here? Did these individuals not express—did none of them express their unwillingness to be subpoenaed or to testify?

I guess I get 1 more minute here.

Mr. WATT. I ask unanimous consent that the gentleman have 1 individual minute.

Mr. CANADY. By dispensation of the gentleman from North Carolina—

Ms. MOORE. Yes, the answer to your question, Congressman Canady, is, yes, I believe that there was a severe misunderstanding here. Both Ms. Schera and Mr. Ross were willing to testify. Ms.—

Mr. CANADY. What about Ms. Peart?

Ms. MOORE. Ms. Peart's only concern that was expressed prior to the press accounts was her unwillingness to drive in traffic in Miami, and we attempted to accommodate that by providing and looking for a car service to bring her from Delray Beach into Miami.

Mr. CANADY. Now how do you know that was her only concern? Who told you that was her only concern?

Ms. MOORE. Because she communicated that with Sicilia Chinn, a member of my staff. My staff is instructed that they cannot make decisions. She told Ms. Peart, which accounts for the four phone calls, that she would talk to her supervisor to determine whether or not we could accommodate her. She did that, and I authorized car service.

Mr. CANADY. So that is based on information that is provided to you by Ms. Chinn?

Ms. MOORE. That is.

Mr. CANADY. OK, very good. Mr. Watt.

Mr. WATT. I would also point out that that's in a letter that Ms. Peart wrote to Congressman Foley, and I'll quote that for the record. "Ms. Chinn left a message on my answering machine indicating that she would find transportation for me to Miami, if that was a portion of the difficulty I had in appearing at the hearing."

I'm not sure I yet understand what all this fuss is about. Maybe I'm just missing the point. The Congress gave the Civil Rights Commission a charge to find out about issues that have polarized views. There are people on every conceivable side of racial, ethnic, national origin tensions, which is, by the way, where the immigration issue comes in, Mr. Smith.

How we could expect the Civil Rights Commission to fulfill this charge without seeking to get opinions that go all across the spectrum I don't know. Now if we want—you know, I don't think it's fair for us to beat up on the Civil Rights Commission for trying to fulfill a charge that we gave them. If we think the charge is inappropriate, then we need to beat up on ourselves or change the law or do whatever is appropriate, but it sounds to me like we're—you know, I'm accustomed to having us question people about not doing their job. It sounds to me like this hearing is about somebody that's trying to be diligent in doing their job. Now they might have, you know, offended somebody in the process, but these subpoenas are not threats to people.

This Commission can't force anybody to do anything. They're just an investigating agency; they have no enforcement authority. They can't call up any organization and say, "We don't like what you're saying." Their purpose is to solicit what they're saying and put it into the process and generate a report.

So I don't know why you all are badgering them.

[Laughter.]

Mr. WATT. I'm lost here. So—

Mr. CANADY. Would the gentleman yield—

Mr. WATT. Sure.

Mr. CANADY [continuing]. Since that's in the form of a question?
Mr. WATT. Yes.

Mr. CANADY. Let me say this: I believe that, based on the information I've seen, that a mistake was made here. I don't know that there was any grand conspiracy to chill anyone's first amendment rights. I think something was done that could have that impact. And I believe that the gentleman from North Carolina would agree that there are circumstances in which the issuance of a subpoena which is directed at someone because they're involved in a particular political activity could, in effect, discourage them from being involved in that activity.

Mr. WATT. If the purpose of this agency was to try to stop them from doing it, but the purpose of this agency is to hear what they are saying and put it into the process.

Mr. CANADY. But if—

Mr. WATT. You know, would you—it would almost be remiss of the Civil Rights Commission not to do this. Now I would go further than that. Even after the people objected, there might be circumstances—and it sounds like they went out of their way to accommodate these people after they objected, and even though they didn't object directly to the Civil Rights Commission, they objected through the press. Even when they read it in the press, they went out of their way to accommodate it.

But I would go even further. There might be circumstances where in pursuing the Commission's charge, even if people objected to coming and responding to the subpoena, they would want to pursue it, and I don't think that would be inappropriate because there might be circumstances where the only way you're going to get the other side of an issue is to subpoena somebody who has a different perspective. We do it all the time here. We don't bring in only people who willingly come. I mean, I don't think these people are too willingly here.

[Laughter.]

Mr. WATT. And we certainly don't do it without taking into account what perspectives the witnesses have and what they have to bring to bear on the issues. That's what the—and this is—they're doing something that's very similar to what a subcommittee does and what a committee of Congress does. I'm sorry, I—

Mr. CANADY. Mr. Smith.

Mr. SMITH. OK. Mr. Chairman, I think I'll proceed to follow my line of questioning from before, and maybe in doing so, we can answer some of Mr. Watt's questions.

And I might just say that I've heard the individual speak on a number of times passionately and eloquently about the need to protect people's civil rights, and it seems to me he was saying that he didn't understand our concerns. I suspect that—I suspect that he could if he—

Mr. WATT. Oh, I do understand your concerns about—

Mr. SMITH. OK.

Mr. WATT [continuing]. About chilling first amendment rights. I do, but I don't know why we—it sounds to me like this is a very adversarial kind of oversight hearing.

Mr. SMITH. Well, let me reclaim my time. I think if we had more cooperation from our witnesses, both those who are here and those

who are not here, as well as documents that are here and documents that are not here, there would probably be less reason to be adversarial, but let it be as it may.

Let me go on, if I might. I want to go back to the procedure that the committee uses to determine whether or not to subpoena an individual, any individual, not necessarily these three—we'll get back to that in a minute. These are—a while ago, Ms. Mathews or Ms. Moore referred to a procedure. Is that procedure in writing as to what steps you follow when you decide to subpoena someone?

Ms. MOORE. The actual steps that we—

Mr. SMITH. Do you have a written policy?

Ms. MOORE. We have a hearing manual that has been provided to the subcommittee, pursuant to Chairman Canady's request.

Mr. SMITH. OK, and that gives a series of steps that are followed in determining whether someone is subpoenaed or not? I'm talking about the actual decision to subpoena. Is that made by you? Is it made in conjunction with the members of the Commission?

Ms. MOORE. Well, I think there are a couple—I'm trying to—I really am trying to respond to you, Congressman. There are two issues—there's the selection of the witnesses and there is the issuance of subpoenas. If the witness, if any witness is determined to be part of our hearing, if they are within our 100-mile radius, they are subpoenaed, period. That is our policy.

Mr. SMITH. Is there any signoff by the members of the Commission themselves or is that totally up to you as to whether they are subpoenaed?

Ms. MOORE. Well, if they're within the jurisdiction, they are subpoenaed. That is the policy and practice of the Commission.

Mr. SMITH. OK, so the Commission members don't necessarily know ahead of time who is subpoenaed?

Ms. MOORE. Well, the Commissioners have input into who the witnesses, the potential witnesses, may be. It is then the job of the Office of General Counsel—

Mr. SMITH. I understand.

Ms. MOORE [continuing]. To impartially determine which of those witnesses will actually be part of the hearing.

Mr. SMITH. OK, I understand. So that the Commission members sign off on who the prospective—

Ms. MOORE. Exactly.

Mr. SMITH [continuing]. Witnesses are?

Ms. MOORE. Right.

Mr. SMITH. OK, in the case of the three individuals that I referred to, and others have referred to, was there any objection by any Commissioners to the subpoenaing of those individuals?

Ms. MOORE. Not that I—no, not that I know of.

Mr. SMITH. In effect, you had blanket approval to subpoena any of the people on this particular—

Ms. MOORE. Well, the Commissioners are aware of our practice of issuing subpoenas—

Mr. SMITH. Right.

Ms. MOORE [continuing]. For the testimony of all witnesses that will appear before our hearing if they are within the 100-mile radius.

Mr. SMITH. OK. When you say, "are aware of," do they vote to approve the list of prospective witnesses?

Ms. MOORE. That is not our—prospective witnesses?

Mr. SMITH. Yes, the people whom you might subpoena that are within the 100-mile area, how are the Commissioners informed as to who those individuals are who might be subpoenaed?

Ms. MATHEWS. Mr. Smith, I'd like to respond to that. The—we have internal procedures, which we have also provided copies to the subcommittee, in which the Commissioners agree to the project design originally, and they have an opportunity to suggest witnesses. The internal procedures provide that it is the staff's determination who to subpoena, and it is the chair's—

Mr. SMITH. Well, I understand all that.

Ms. MATHEWS [continuing]. Signature—

Mr. SMITH. I understand all that. My question, again, was, how are the Commissioners notified of the individuals whom you intend to subpoena? Do they have signoff authority or is it just that they're notified?

Ms. MATHEWS. The statute of the Commission provides for the chair to sign subpoenas. A copy of the witness list is provided to all of the Commissioners. I provide it to them.

Mr. SMITH. OK. So they have—all the members of the Commission are provided a list of individuals who might be subpoenaed; is that correct?

Ms. MATHEWS. Yes.

Mr. SMITH. OK. Now that list is furnished to them before the chair signs off and signs the subpoenas?

Ms. MATHEWS. The list is usually, yes. I don't have dates in front of me, but yes.

Mr. SMITH. Oh—

Ms. MATHEWS. But it is not a signoff by the Commissioners; it is not a vote by the Commissioners. Our internal procedures do not provide for that process.

Mr. SMITH. OK. They are just notified of the individuals, and are their views solicited or not?

Ms. MATHEWS. Their views have been previously solicited prior to development of the—

Mr. SMITH. Are views solicited on whether these individuals are appropriate people to subpoena?

Ms. MATHEWS. The procedure—

Mr. SMITH. Just yes or no.

Ms. MATHEWS. The procedure does not require, nor does it provide an opportunity for the Commissioners—

Mr. SMITH. OK, then the answer is no. One last quick question is, who—obviously, you keep the administration, I assume, appraised of your activities. Who is your contact within the administration?

Ms. MATHEWS. The Commission is an independent agency. We are—

Mr. SMITH. You have no contact with the administration whatsoever?

Ms. MATHEWS. We don't have a contact point, if that's what you mean, not—

Mr. SMITH. Who do you keep informed of your activities?

Ms. MATHEWS. Nobody. I mean, we are an independent agency.

Mr. SMITH. No, no, I understand that.

Mr. CANADY. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I don't have any questions. I'd just like to say to my friend from North Carolina that I think there's a big difference to be drawn between subpoenaing individuals to come and testify about something that the Congress or an agency that has subpoena power is investigating, based upon actions or their knowledge of incidents or circumstances, and simply exercising this broad subpoena to apply to every single person that they come in, and they want them simply to come in and give their opinion or their viewpoint or their perspective on how immigration is affected by racial tensions or affects racial tensions in the country. Congress—

Mr. WATT. But how do you think that chills—

Mr. GOODLATTE. Well, because I think that the effort there can be—and we don't know until we get to the bottom of it—but can be to say to somebody, "We're watching what you're doing. We're watching what you're thinking, and we are targeting you to come in and testify before us, and we're going to ask you difficult questions," or whatever your purpose might be, because you are involved in a particular activity of free expression, of free association, of organizing a group to do a particular thing, and if you have nothing more than that.

Now let me ask you, Ms. Mathews, the Congress—you know, in your case right here today, we didn't subpoena you first off; we requested that you come and talk. Wouldn't that be a more suitable policy and only issue the subpoena authority under circumstances where you truly had a witness that you needed to have information from them about actions or activities that you had to have, rather than this broad exercise of your power, that in every single instance you issue a subpoena?

I mean, we're not talking about a court in which the rights of plaintiffs and defendants have to be protected by assuring that they are guaranteed their right to have evidence introduced in their favor in the case, and so that the proceeding is tried fairly. We're talking about simply a discovery procedure where you are going out and gathering information and then, hopefully, at some point reporting that information to the President and to the Congress, as you have not yet done, but for the purpose of gathering information.

Why wouldn't it be a much better policy to exercise that subpoena power, which is an infringement on somebody's actions and activities, sparingly?

Ms. MATHEWS. The Commission has found a subpoena to all witnesses to be the best policy, and there have been instances—

Mr. GOODLATTE. Why?

Ms. MATHEWS [continuing]. In the past—I'd like to elaborate a little bit here. There have been instances in the past where individuals who are willing to appear, but are concerned about the reaction of their supervisors or a similar—

Mr. GOODLATTE. When I tried cases, I had that happen all the time, and when that happened, I would make sure a subpoena was issued, because that would give them the ability to say that, but

you don't have that in this situation. You have somebody who didn't want to come, and you exercised the subpoena, and there's question about whether you should have exercised it. Why not go on to the next person who might have a particular viewpoint or perspective and ask, would you like to come and give your viewpoint on how immigration affects racial tensions in this country, instead of forcing somebody who doesn't want to come to do it?

Ms. MATHEWS. We have found the use of subpoenas for all witnesses to be the fairest and best process in terms of—

Mr. GOODLATTE. Why is it fair?

Ms. MATHEWS [continuing]. In terms of obtaining facts for our purpose, for the hearing. We've found that over the years—and I quoted in my testimony a statement from a Vice Chairman of the Commission in its early days with the point you're making.

Mr. GOODLATTE. Well, I think that compared to the use of subpoena powers by other entities, including the U.S. Congress, which I am sure has abused it from time to time, but the procedure generally on this committee and this subcommittee have been to request people to come and not to issue the subpoena unless there is something we really have to know that we can't get from anybody else, and they are recalcitrant and they are unwilling to come forward and testify.

And it seems to me that to have a policy of imposing upon U.S. citizens based upon your desires and your opinions about what would be good for the Commission to have, that you're going to exercise the subpoena power in every instance, is an abuse of that power.

Ms. MOORE. Mr. Goodlatte, if I may just respond—

Mr. GOODLATTE. Please.

Ms. MOORE. I think there is a policy issue involved, but the opposite could also occur. If we made a distinction between voluntary and involuntary witnesses, then the involuntary witnesses in public hearings would be branded as such. It has been our experience that by providing subpoenas to all witnesses in this factfinding process that no distinction would be made and all witnesses would appear to participate in those hearings.

Mr. GOODLATTE. Well, it seems to me that if somebody has information that the Commission needs to know is involuntarily withholding that, you should make it clear that there is a distinction there, and you also should say that when you're simply gathering information about the general topic that you are looking into, that you have the authority to look into, that you should exercise that subpoena sparingly and look for witnesses who do want to volunteer and do want to come forward, and not force people to give their opinions on things—

Ms. MOORE. They weren't forced in this circumstance, and over the years we—

Mr. GOODLATTE. They're forced to travel to the place that you have appointed and give their testimony. They can refuse to answer questions—

Ms. MOORE. No one was forced, Mr.—

Mr. CANADY. I'm sorry, the gentleman's time has expired.

Mr. GOODLATTE. You don't need to force somebody to appear some place.

Mr. CANADY. The gentleman's time has expired. We're going to do one more, maybe just one more round of questions and then going to move on to our final panel.

I will note that we intend to have another oversight hearing. So although we, hopefully, will be looking at some other issues, we may—I'm certain we'll be readdressing these issues.

But let me move on to something that is a different subject that relates to a report regarding title VI. By memorandum of August 15, 1995, four of the members of the Commission wrote to you, Ms. Mathews, informing you that they wanted to work out changes to the title VI report, so that it could be approved by a majority of the Commissioners.

At the Commission's monthly meeting on October 6, when Commissioner Horner raised the issue of the August 15, 1995, memo, offering to work out changes to the title VI report, she was informed that it was the policy of the Commission that the Staff Director would not receive any memo purporting to be from commissioners unless signed by the Commissioners themselves. Since the memo requesting changes to the report was not signed, it was not accepted by you.

Who initiated this policy regarding the acceptance of memoranda from members of the Commission by the staff and when was it initiated?

Ms. MATHEWS. Mr. Canady, at our October 6th meeting—there was a discussion in regard to the fact that this particular memo, and other memos I have received over recent months have sometimes been signed and sometimes not, and the Commissioners discussed among themselves the value of having memos signed. The—

Mr. CANADY. Well, you're telling me there was not such a policy in place?

Ms. MATHEWS. Memos from Commissioners have always been signed up until the last year or so. This is a new phenomenon.

Mr. CANADY. The issue here is—the issue is your receiving a memo and ignoring it, as I understand.

Ms. MATHEWS. And ignoring it would not be the way I would characterize it, Mr. Canady.

Mr. CANADY. How did you respond to the memorandum?

Ms. MATHEWS. I had no choice but to not respond. This was a memo from four Commissioners. I do not work for individual Commissioners; I work for the Commission as a body. When five Commissioners or a majority of Commissioners inform me, direct me to do something, then, indeed, that's the procedure we follow. A majority of Commissioners did not direct me to change the title VI report and, in fact, the report failed by a vote of 4 to 4. There was a split Commission, and our Chair and Vice Chair responded back to these four Commissioners with diametrically opposed views on this issue.

Mr. CANADY. Well, I understand there was a division on the Commission on this subject. So is the reason you did not respond to the memo is that you were incapable of responding? It wasn't that the Commissioners had failed to sign it?

Ms. MATHEWS. The failing to sign was a specific issue, but it was not the most important issue in regard to the point you're making.

That was just a topic of conversation that began this discussion at our October meeting.

Mr. CANADY. Well, let me—I understand your response at this point, that you don't act to change a report because four members suggest that, and, obviously, a majority of the members of the Commission have to approve any changes and ultimately approve the report, but it seemed to me that what was going on here was an attempt to work out the differences, so that the Commission could comply with its statutory responsibilities.

Now if you're telling me you can't play a role in that, that puzzles me a little bit, and what further puzzles me is why you did not respond to the four Commissioners and tell them, "I'm sorry, my hands are tied. I can do nothing at this point until I hear from another Commissioner," rather than simply ignoring or failing to give any response to the memorandum they had sent you.

Ms. MATHEWS. Mr.——

Mr. CANADY. I mean, if I—quite frankly, I find it mystifying that you would not send them a memo that gave your position or explained why you were not taking action or did something, but just to let it sit there without any response seems to me to not be consistent with good business practice.

Ms. MATHEWS. When I received a memo, immediately thereafter, within a day or two, signed by the Chair and the Vice Chair, with diametrically opposed views, it certainly appeared to me to be the best course of action for me to take, to wait to see what the Commissioners could work out amongst themselves, in order to receive direction from the Commission about how to proceed. I felt I had no other alternative, Mr. Chairman.

Mr. CANADY. OK. Well, we're going to have—I want to follow up on this, so we will have an additional round.

Mr. Watt.

Mr. WATT. I yield my 5 minutes to you, so you can go ahead and pursue it now, and maybe we can get through with this.

Mr. CANADY. OK, thank you. Yes, I think it can come.

Let me read you something from a transcript of the July meeting of the Commission where the issue of the report that we've just been discussing came up. Commissioner George said, "Madam Chairman, would it be appropriate for those of us who'd like to comment in a way that we hope would assist the staff at this point—and I think your strategy is a very good one—to submit memos to them through the Staff Director? Is that the appropriate"—Chairperson Berry, "Yeah. What you should do is if you are moved to do so, you should give a memo to the Staff Director with your comments and do it as soon as possible."

Now that's a quote from——

Mr. WATT. Mr. Chairman, let me reclaim my time just long enough to make one point.

Mr. CANADY. Sure.

Mr. WATT. I think we are into the height of micromanagement. I'm perfectly—I mean, I'm giving you the time to pursue this, but I think this is absolutely ridiculous. I can't believe we're taking valuable congressional hearing time to micromanage to the point that this does, but I yield back to you.

Mr. CANADY. Well, let me just say, the Commission has not been carrying out its responsibility to move forward with submitting these reports. Four members of the Commission submit a memorandum to the Staff Director and they receive no response. I think that's a problem, and I——

Mr. WATT. But don't you think they can handle it over there? I mean——

Mr. CANADY. Well, they don't seem to be.

Mr. WATT [continuing]. Is it really a——

Mr. CANADY. They don't seem to me, and I——

Mr. WATT. Is it really a national issue that Congress should try to rebuff——

Mr. CANADY. Well, I'll tell you, I've received letters. I've received letters from four members of the Commission expressing their——

Mr. WATT. OK, go right ahead.

Mr. CANADY [continuing]. Distress with the way things are working at the Commission, and I think that that is something I cannot ignore in the same way that the staff might ignore a letter, a memorandum, from four members of the Commission.

What would you——what would you say to that comment from the transcript? Did that——was that, in fact, said or is this an inaccurate transcript?

Ms. MATHEWS. Well, in view of the dialog that has transpired, I'm——

Mr. CANADY. Answer my question.

Ms. MATHEWS. I'm a little unclear. I would like you to repeat it, if you don't mind, Mr. Canady, that particular quote, which is what you're asking me to respond to.

Mr. CANADY. "Madam Chairman, would it be appropriate for those of us who'd like to comment in a way"—this is Commissioner George—"that we would hope would assist the staff at this point—and I think your strategy is a very good one—to submit memos to them through the Staff Director?"

Going on, Chairperson Berry, "Yeah. What you should do is, if you are moved to do so, you should give a memo to the staff director with your comments."

Now you're—the staff——

Ms. MATHEWS. So what's—and your question is?

Mr. CANADY. Well, the Chairperson had told the members of the Commission that in order to work out the problem with the report and try to move forward in coming up with a resolution, the thing for them to do was submit a memo to you or memos to you. And then you're telling me that when you got a memo, when you got a memo, you could do nothing to respond to it.

I guess the point I'm trying to make is apparently your understanding of what you can do is different from the understanding of the chairperson of the Commission; is that fair to say?

Ms. MATHEWS. No, that is not. Mr. Canady, the conversation that—the context of that conversation and that particular point you're making at the July meeting was such that the Commissioners ended that discussion with a desire to work out whatever differences they may have. The differences were expressed to some degree on the record, but Commissioners did not have time or were not prepared, or both, to express the full extent of their comments.

And it was subsequent to that dialog that you're quoting that I received this letter from four Commissioners in which they basically asked that fundamental changes be made to the report, dramatic changes, and that's a different context than submit your comments to the staff director, which is the point you're quoting.

Mr. CANADY. OK, but why is it that you made no response to the Commissioners? Why didn't you tell them that you were not in a position to take any action on their memo, to give them the simple courtesy of a response?

Ms. MATHEWS. Well, I would assume the Commissioners would understand that I don't work individually for them, nor do I work for a group of three or two or four of them; I work for the Commission as a whole. I didn't feel I needed to have an opportunity to say that.

And, furthermore, I think I've answered your question a moment ago, that when a day or two later I receive a letter signed by the Chair and the Vice Chair of the Commission in which they expressed diametrically opposed views to these four Commissioners, it appeared to me I had no alternative but to not respond until the Commission, a majority of the Commission, could agree on how they wanted to proceed, and that agreement was not reached until the October Commission meeting.

Mr. WATT. I ask unanimous consent for 2 additional minutes, so that the gentleman can get this out of his system.

Mr. CANADY. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Let me go back to the situation of the individuals who were subpoenaed in Miami. How many were subpoenaed there?

Ms. MATHEWS. Deputy General Counsel, do you recall?

Ms. MOORE. I do not have the figures in front of me. I believe that we had a total of 40 witnesses, some—

Mr. SMITH. Something like that—

Ms. MOORE [continuing]. 20-something or so were subpoenaed.

Mr. SMITH. And I assume that an effort was made to get witnesses from, in the case that we're talking about, from individuals who favored immigration reforms and individuals who opposed immigration reforms, so that both sides would be represented; right?

Ms. MATHEWS. That is true.

Mr. SMITH. OK. Now my question is—let me read you the subpoena language that I have before me that was—this was the language of the subpoena directed toward the three individuals that I have referred to before. It reads, and I think this will be of interest to all our members of the committee, the subpoenas asked for "all drafts or variations, any document, any other writings produced or by, on behalf of that particular committee, analyzing, discussing, or otherwise relating to the scope of any measure, bill, initiative," so on. Does that strike you as being perhaps a little bit overly broad?

Ms. MOORE. Well, let me just first correct—

Mr. SMITH. It strikes me as a fishing expedition, but maybe I'm wrong.

Ms. MOORE. Let me correct factually your statement regarding the subpoenas. There were three separate subpoenas and three separate duces tecums for these individuals. That is not the lan-

guage of the document requests that was in the subpoenas served to each of these three individuals. Each one had different subpoenas with different requests for documents.

Mr. SMITH. OK, now that's real—that was my next question, which you anticipated, and I'm sorry to hear the answer. I just assumed that the language in the subpoenas was exactly the same to all the individuals on either side of this particular issue.

Ms. MOORE. There were two different issues under consideration here. Yes, the language was the same with respect to inquiries that were posed to different organizations. The particular inquiries may have been different for each organization, if you follow me. If we asked for the same material from two organizations, the language was identical.

Mr. SMITH. Well, then, you apparently recognized the language that I just read, and I've never seen anything so broad in my life, but—

Ms. MOORE. That's standard subpoena language, sir.

Mr. SMITH. And that was directed to whom?

Ms. MOORE. I believe that the language, because you referred to a measure or initiative, was to Rob Ross.

Mr. SMITH. Rob Ross, OK. Now why was that language not—OK, he was associated or affiliated with one—with the Florida-187 Committee. Who was the other—what was the name of the other organization on the other side of this issue who you also subpoenaed?

Ms. MOORE. I'm not sure I follow your question.

Mr. SMITH. There must have been a competing organization that was on the other side of the issue from Florida-187 Committee.

Ms. MOORE. Well, there were organizations that opposed—

Mr. SMITH. Right.

Ms. MOORE [continuing]. The legislative amendment that Mr. Ross—

Mr. SMITH. OK, give me the names of one of those organizations.

Ms. MOORE. There was—I'm sorry, I just need to look at—

Mr. SMITH. OK.

Ms. MOORE [continuing]. Refresh my memory. The Committee for Dignity and Justice for Immigrants was one.

Mr. SMITH. OK, let's just take that as an example. Did the subpoena to that organization track the language that I just read you?

Ms. MOORE. No, sir, that organization is not sponsoring an initiative. The only organization that is sponsoring a legislative initiative is Florida-187—

Mr. SMITH. OK.

Ms. MOORE [continuing]. And that was what we were asking them about.

Mr. SMITH. OK. So they were, in fact, singled out then? I thought you just told me all subpoenas had the same language, but that subpoena was different from other subpoenas, the one—

Ms. MOORE. That is not what I just told you, sir, with all due respect.

Mr. SMITH. OK.

Ms. MOORE. I indicated that similar material was requested from all organizations on different sides of the issues, and where—

Mr. SMITH. How did the subpoena read to the organization that you just mentioned?

Ms. MOORE. I do not have the subpoena in front of me. It was provided to the members, to the subcommittee.

Mr. SMITH. OK. So we can find out why the difference was between the two. You said this was—the subpoena to the 187 group was different because they were initiating the ballot—

Ms. MOORE. Well, the language you've just referred to referred to the initiative that they were sponsoring. They are the authors of that initiative. No other organization was the author of that initiative.

Mr. SMITH. Right, but, no, no, you just didn't limit it to initiatives. You said, any—all drafts, any document, any other writings analyzing, discussing, or otherwise related to the scope of any measure. You just didn't limit it to the initiative.

Ms. MOORE. Sir, the rest of the language—I, again, don't have it in front of me—says, “produced by or on behalf of that organization.” So it's not any initiative; it's their initiative that we were—

Mr. SMITH. OK, yes, my question is, though, this initiative is different. Why did the initiative to Robert Ross—why did the initiative, the subpoena to him ask for documents when the subpoena, apparently, to the other individuals did not ask for documents?

Oh, drafts of documents. OK, why did you want drafts of documents and not the documents themselves? It just seems to me that you singled out an individual and an organization unfairly.

Mr. Chairman, if you'll indulge me, I have one other question, and it seems to me very pertinent.

It seems to me—and I'll be very happy to stand corrected—that you have asked this individual and this organization for documents, very broadly described, of the very similar types of documents that you are refusing to give us today.

Ms. MATHEWS. Well, is there a question?

Mr. SMITH. Why is that?

Ms. MATHEWS. Why is that? I think, Mr. Smith, we have a mandate that is statutorily—

Mr. SMITH. Well, shouldn't you practice what you preach?

Mr. CANADY. I'm sorry, the—

Mr. SMITH. And my time—Mr. Chairman, do you want to follow up on that or—

Mr. CANADY. Well, Mr. Goodlatte.

Mr. SMITH. Maybe he'll follow up. OK, thank you.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, I'm becoming convinced that there is an intent to have a chilling effect here on activities of individuals and organizations. Just why on earth would you want to subpoena an individual to come in and testify regarding the activities of a ballot initiative and subpoena the records and documents of the organization promoting that? This is a democratic process. These are people who are acting openly through the public process. They're not burning crosses on somebody's front lawn. They're not throwing rocks at the houses of immigrants. They're not doing anything that would involve something that would be questionable violation of the civil rights of individuals, whether they be immigrants or other groups of people. They are going through a public process, exercising their

rights under the U.S. Constitution, and yet you single them out to come and testify before your Commission about the activities of their organization.

Ms. Mathews, and then Ms. Moore, why?

Ms. MATHEWS. They—this organization had a particular view that we were interested in hearing about. It would have illuminated—

Mr. GOODLATTE. A view, a first amendment expression. Had they done anything to harm somebody's civil rights?

Ms. MATHEWS. Our exploration—our exploration, Mr. Goodlatte, of racial and ethnic tensions is designed to get at the facts, and a particular view is a fact. We want to hear why they have their particular—developed their view, because it would be illuminating to us in our exploration.

Mr. GOODLATTE. Well, based on that answer, Mr. Chairman, I think that legislation ought to be forthcoming restricting the subpoena power of this entity. I mean, that's absolutely unbelievable that you would not make the distinction between people's viewpoints, their rights to participate in this democracy, and actions that they might take that would actually take away from somebody else's civil rights. I think that is an enormous abuse of your subpoena power. That, coupled with the fact that you make no distinction between asking people to come in and voluntarily give their opinions on views, and the need to exercise the subpoena, which I am sure is why it was originally granted to you, to get to the bottom of activities and actions that deprive people of their civil rights—I think you have gone way beyond the scope of what was intended.

Ms. MOORE. May—

Ms. MATHEWS. Go ahead.

Mr. GOODLATTE. Yes, Ms. Moore, you are entitled to respond.

Ms. MOORE. Yes, thank you, Congressman Goodlatte.

I really think that there's a fundamental misunderstanding here. If one looks at the legislative history of the debates creating the Commission, it is clear that the Congress recognized that we are not an enforcement body, and yet around issues of such great passion as civil rights nevertheless, there's a need to get the facts on top of the table—

Mr. GOODLATTE. Sure. Sure, if there are—

Ms. MOORE [continuing]. And to examine the facts.

Mr. GOODLATTE [continuing]. Actions that take place and you need to explore those—

Ms. MOORE. If I may—

Mr. GOODLATTE [continuing]. I think that's fine, but—

Ms. MOORE. If I may—

Mr. GOODLATTE [continuing]. When you're talking about somebody's opinion—

Ms. MOORE. It is not the opinions that are critical to our inquiries.

Mr. GOODLATTE [continuing]. It's entirely different.

Ms. MOORE. It is the facts upon which those opinions are based that we are interested in pursuing in the hearings.

Mr. GOODLATTE. Well, I think—

Ms. MOORE. And community leaders from 1957, through Republican, through Democratic administrations, have been called forward to the Commission without incident to voice those views. Now we have used the process of subpoenaing all witnesses. If witnesses object, we have accommodated those objections.

Just last July, we subpoenaed virtually all of Wall Street. We subpoenaed banks; we subpoenaed securities industries. They raised very serious concerns to them. We negotiated. We accommodated their concerns, and we reached an agreement that enabled us to go forward and enabled them to give us the information that we needed, which, I would just add, parallels the negotiating process that we hope to engage in with this committee.

Mr. GOODLATTE. Well, let me just say that, to me, the approach of hit them first and then negotiate afterwards, coming from the agency of the U.S. Government that symbolizes our concern about the civil rights of American citizens, is a deplorable—deplorable—attitude that you have in exercising your responsibility.

Mr. Chairman, I yield back.

Mr. CANADY. Thank you. I have some additional questions.

The statute creating the Commission gives the Commission the duty of investigating a variety of matters. One of those is matters relating to the deprivation of the right of citizens of the United States to vote and have votes counted. That's in the statute.

Now in light of that specific duty of the Commission, I was particularly distressed to receive a letter on June 23, 1995, from four members of the Civil Rights Commission—Commissioner Anderson, Commissioner George, Commissioner Horner, and Commissioner Redenbaugh—in which they complained regarding the failure of the Commission to properly count their votes with respect to a report entitled, "Funding Federal Civil Rights Enforcement."

Now the letter says, "As four of the eight Commissioners of this body, we wish to inform you that this report was sent to you after a telephone poll vote count tallied as four yes, one no, and three nonvoting. Three of the undersigned Commissioners were denied a proper opportunity to vote. If all Commissioners had voted, the report would not have passed in its current form."

Now I understand that it is your contention and your position that the vote was properly conducted. Why is it that these members of the Commission would misrepresent what happened?

Ms. MATHEWS. I can't answer for other members of the Commission, Mr. Canady. All I can do is agree with how you characterized my reaction and the facts. I can summarize, though, the circumstances, if that would be of help.

Mr. CANADY. Well, let me ask you a couple other questions I think may help us get to the heart of this. You have said that the vote that was taken on June 20, when a telephone poll was conducted, was taken in accordance with standard Commission procedure.

Ms. MATHEWS. Right.

Mr. CANADY. Is that correct?

Ms. MATHEWS. That's correct.

Mr. CANADY. Now in a letter that you sent to me in response to a request for information, you stated, "I would like to emphasize

that the Commission has no specific procedure for adopting reports." Would you try to square those two statements?

Ms. MATHEWS. I'll be glad to elaborate. What I meant by that quote that you just articulated is that the Commission has no different procedure for approving reports than it does for any other type of approval action.

Mr. CANADY. Now, as I said, this letter came from four Commissioners. According to Commissioner Redenbaugh—and I'm quoting him—"On Tuesday afternoon, I stated to the Staff Director that if the Commissioners were required to have our votes recorded on that day"—and that Tuesday afternoon was the day, the June 20 day, the date of the vote—"Commissioner Anderson and I must have our votes recorded as no. She indicated to me that it would be possible to have the vote held over until the next day, and I relied on that representation."

Is that claim by Commissioner Redenbaugh not true?

Ms. MATHEWS. I—I did not indicate that the vote could be held over. I recall Commissioner Redenbaugh calling me. I recall that he indicated that for him to vote in favor of the report he would require some changes made to the document, and I—

Mr. CANADY. Why would you not have recorded his vote as no? You understood that he was against it, didn't you?

Ms. MATHEWS. That is not my understanding of what he said. He said he would require that some changes be made to vote in favor, and he wanted to vote in favor, and he asked me what procedure would enable that to occur, and I said that I did not know of a procedure to enable a change to be made to the document when the vote was in process.

Mr. CANADY. Have you considered that you may need to evaluate your procedure for taking votes if this sort of confusion results, and there are four members of the Commission who seem to think that the procedures are inadequate and have not given them their right to vote?

Ms. MATHEWS. Mr. Chairman, if the Commission desires to change procedure, that's always an option, but I followed the procedure as it currently exists.

Mr. CANADY. Mr. Watt.

Mr. WATT. I don't have any questions.

Mr. CANADY. Mr. Goodlatte.

Mr. GOODLATTE. I don't have any questions.

Mr. CANADY. Well, we will conclude our questioning of this panel. We appreciate your being here. We will have further questions, and I am still looking for the legal basis for your refusal to respond to our request, and you will be hearing more from us on that subject.

Ms. MATHEWS. Thank you, Mr. Chairman.

Ms. MOORE. Thank you.

Mr. CANADY. Thank you.

I'd now like to ask our final witness today to come forward, Mr. Robert Ross, Jr.

And, Mr. Ross, if—let me introduce you and then we'll swear you in. You can be seated.

Our final witness today will be Robert Ross, Jr. Mr. Ross is president of the Florida-187 Committee, an umbrella organization for citizens' groups concerned with illegal immigration.

Now if you would stand, Mr. Ross, and please raise your right hand.

[Witness sworn.]

Mr. CANADY. Thank you. Please be seated.

Mr. Ross, if you would please summarize your testimony for us in 5 minutes or so, we will be pleased to put your full written statement in the record, without objection.

**STATEMENT OF ROBERT W. ROSS, JR., EXECUTIVE DIRECTOR,
FLA-187 COMMITTEE, INC.**

Mr. ROSS. Thanks very much. I'd appreciate that.

I just wanted to respond to a couple of the statements which I heard today as I was sitting here. The facts about my group's activity are fairly well known. The movement in this country to address the question of illegal immigration has taken on an interesting turn in the last couple of years, primarily because of the perceived inability of Congress and State legislatures to deal with this. It is such a pressing matter of concern that citizens have tried to take it into their own hands to come to terms with it.

It's also no surprise that our group in Florida has been in contact with people in California and other States who are concerned with the issue, and certainly the proposition 187 movement in California last year was one of the most explosive citizen-initiated movements in the last 15 years, probably since proposition 13 out in California.

We're also cognizant of the fact that there is a very well-organized opposition to our movement in Florida. If I might just give the brief framework of events that happened, on August 1, we knew that there was a meeting in the White House between President Clinton and members of the Hispanic Caucus where they made certain demands, such as continual support of bilingual education and other things. We knew that on that date that they expressed to him their wish that he oppose any 187-style initiatives, either in the States or in Congress.

Within a couple of days, the Commission on Civil Rights began making phone calls to activists in southern Florida. Now this may have been a coincidence; we don't know. On August 5, there was a gathering of over 300 activists in Ft. Lauderdale at the Broward County Library, representing 30 different organizations who are going to be spending an enormous amount of money to oppose our campaign. We do know that some of the people in these organizations have been in touch with anti-187 activists in California, who we also know have been in touch and have dealt with on a close basis with Cruz Renoso, who is the Vice Chairman of the Commission on Civil Rights. In fact, Cruz Renoso spoke at a conference in Riverside, CA, on January 14 where he said that all 187 movements were put forward by racists, that it was an inherently racist type of legislation, and that he opposed it. In fact, at the September 15 hearing of the Commission on Civil Rights in Miami, Mr. Renoso reiterated his belief that any 187-style legislation is racist and it should be opposed.

What we have a problem with is that here is an individual who is the Vice Chair of a Commission, which I believe is supposed to be nonpartisan or bipartisan, who has not only come out in opposition to our initiative campaign, but has spoken out publicly and

has given support to those who oppose it, and now he is sitting as a finder of fact, through the use of the authority provided by the Congress and through the auspices of this Commission, to investigate our activities.

And I sat here and I can't really say I was amused as the representatives of the Commission on Civil Rights indicated that this was just another hearing, that there was nothing special about the subpoenas that were issued. Well, the subpoena which I personally received was delivered on a Saturday morning at my home by a U.S. marshal. It was over a page and a half in length, single-spaced, and it asked for virtually every document that had been prepared or utilized by our committee in preparing our citizen-based initiative dealing with a State issue.

We're troubled by the fact that a Federal agency would even think that it was within the scope of any type of permissible activity to force citizens to come before it and justify their political views, because that's what's entailed when you ask for all drafts and all memoranda in the preparation of an initiative amendment.

We were asked to give all of our internal studies. Well, I had spoken to representatives from the Commission, and I indicated to them that I am not an expert in the area of either race relations or demographic studies. All of the reports that we used in drafting our legislation came from the Governor's Commission on Immigration Reform—that's Governor Chiles—and from other reports which we received and which are readily available, such as George Borjas' studies and the studies of others.

And then if I might just briefly touch on the fact that the Commission withdrew the subpoena when they found out about our concerns, that's just—that's absolute obfuscation. The fact of the matter is that I made it very clear that I did not want to waste a day of my time to come to Miami to testify in general about my feelings about race relations in Dade County. I told them I didn't have any specific factual information about race relations in Dade County. The city is 50 or 60 miles from where I live. I didn't profess to be an expert in the area, and if they wanted any of the reports I had, I would send them copies.

JoAnn Peart made it so clear that it took a dozen phone calls for them finally to realize that they were going to have to send a marshal to subpoena our—on one occasion, she was hiding in her home while a U.S. marshal came to the door and was writing down license plate numbers in her driveway. That's how frightened she was because she is a housewife. She thought that the entire weight of the Federal Government was coming down on her.

And Enos Schera, the third individual who was subpoenaed, is a 72-year-old man who leads a small group in Dade County. He had open heart surgery a couple of years ago, and he wasn't too pleased with receiving the subpoena, either, especially when the duces tecum annexed to his subpoena asked for documents going back as far as 15 years. That's what the big deal is about these subpoenas. It chilled the rights of a lot of people in south Florida. There are people who refused to participate in our activities after hearing about these subpoenas. There was a taxpayers' group in Naples that was going to get involved, but changed its mind. That's the big deal.

Thank you.

[The prepared statement of Mr. Ross follows:]

PREPARED STATEMENT OF ROBERT W. ROSS, JR., EXECUTIVE DIRECTOR, FLA-187
COMMITTEE, INC.

By way of introduction, allow me to advise you that the FLA-187 Committee, Inc., is a non-profit entity with an all-volunteer staff. The FLA-187 Committee serves, in general terms, as the umbrella organization for a network of citizens' action groups which are concerned with illegal immigration, with the assimilation of legal immigrants into American society, and with the effect of large-scale immigration on the quality of life in Florida. The Committee has commenced a citizen-initiated constitutional amendment campaign in Florida.

FORMATION OF FLA-187 COMMITTEE

Following the election of 1994, members of numerous interested groups gathered to discuss the possibility of formal action during Florida's 1995 annual legislative session (running from February through May). The groups represented included environmental organizations, English-language advocacy groups, population stabilization chapters and immigration reform activists.

Originally there was virtual unanimity in the belief that it would be preferable, in terms of economic considerations and other salient criteria, to work toward a legislative solution to this problem. After significant debate over the next several months, and after the emasculation of Sen. Ginny Brown-Waite's immigration reform legislation, it was concluded during March, 1995, that it would be impossible to move any legislation relating to illegal immigration or to the implementation of "Official English" through the Florida Legislature.

Accordingly, after several more weeks of discussion between representatives of the interested organizations, it was decided that a non-profit political committee would be formed to serve as an umbrella for these groups. In mid-April, 1995, the non-profit entity, FLA-187 Committee, Inc., was incorporated, and the Statement of Organization for the political committee was filed with the Secretary of State on April 20, 1995.

DRAFTING OF THE FLA-187 AMENDMENTS

The legal research and discussions involved in the preparation of the subject amendments commenced in March, 1995. After an initial draft was prepared, further consultation occurred with members of various groups, and a final draft of each amendment was ready in May. The technical format of the amendments was approved by the Florida Secretary of State, and printing and distribution of the amendments began in June, 1995.

The four amendments cover the following subject areas:

1. Prohibiting the expenditure of state tax dollars for the provision of social services for illegal aliens, with delineated exceptions.
2. Prohibiting the expenditure of state tax dollars for the provision of a free public education for the (non-citizen) children of illegal aliens.
3. Requiring cooperation between state and local officials with federal immigration authorities.
4. Providing for the implementation of Old English.

INTERACTION WITH U.S. COMMISSION ON CIVIL RIGHTS

On or about August 2, 1995, Enos Schera of the Citizens of Dade United, a group participating in the distribution of the FLA-187 petitions, received a telephone call from a staff member of the U.S. Commission on Civil Rights, requesting his presence at Hearings which the Commission had scheduled for mid-September in Miami. Mr. Schera agreed to testify at that hearing.

On or about August 4, 1995, Jo Ann Peart of Floridians for Immigration Control, another group participating in the FLA-187 petition drive, received a telephone call from a woman named Sicilia Chinn, who identified herself as a staff member of the U.S. Commission on Civil Rights. She advised Mrs. Peart about the September hearings in Miami, and requested that Mrs. Peart provide information in a telephone interview to the Commission. On August 8, 1995, this interview was conducted and Mrs. Peart was advised that a tape recording of the interview would be made as it occurred. Mrs. Peart became uncomfortable when the questioner began delving into the size of F.I.C.'s membership and the precise activities of its membership, as she was unable to relate the relevance of these questions to the ostensible reason that the hearings were being conducted.

In mid-August, the FLA-187 office in Boca Raton received a call from a staffer of the Commission, and requested the identity of a FLA-187 official who would be able to provide information sought after by the Commission.

On or about August 18, 1995, Mrs. Peart received 4 calls from Ms. Chinn. During one call, Mrs. Peart was advised that she had been "selected" to appear at the Commission's hearing on September 15th. When Mrs. Peart indicated some reticence to testify and indicated that she would need to check her schedule, Ms. Chinn proceeded to advise her that, if Mrs. Peart did not agree to appear voluntarily, she could be compelled to appear by way of a subpoena. Mrs. Peart was shocked by this threat, and ended the conversation. I spoke with JoAnn at some length later that day, and she was very upset about the entire episode. I attempted to calm her down, and assured her that I would engage in legal research to ascertain the precise nature and scope of the Commission's administrative subpoena power.

It seemed quite curious to me that the Commission was so insistent on JoAnn's testimony. Quite clearly, she had never represented herself as one who is an expert in the field of research covering the political and socioeconomic impact of large-scale illegal immigration. Floridians for Immigration Control, in similar fashion to other immigration reform, population stabilization or environmental groups, has for its statistical support relied primarily upon research by George Borjas, Donald Huddle, Gov. Chiles' Task Force on Immigration, and other nationally recognized sources. Thus, her utility as an "expert witness" was non-existent. In similar fashion, she has not gathered a large amount of empirical data based on personal observation which would illuminate the reasons for racial tensions in South Florida, so her usefulness as a "fact witness" was questionable. This, then, begged the question as to why the Commission was so hell-bent on compelling her to testify at the September hearings.

Mrs. Peart received another 3 or 4 calls from Commission staffers during the following week. Finally, on August 25, 1995, she wrote a letter to Congressman Mark Foley, indicating her distress regarding her treatment by the staff of the U.S. Commission on Civil Rights, and requesting his assistance in investigating the matter. Congressman Foley responded by immediately forwarding correspondence to the Staff Director of the U.S. Commission on Civil Rights, seeking an explanation as to the actions of the Commission's staff.

I received a telephone call from Lillian Moyano Yob, who is apparently employed by the Commission as an "attorney advisor," during the latter portion of August, requesting that I provide some information concerning FLA-187's activities. An interview was conducted on or about August 25, 1995, and lasted approximately twenty minutes. I was advised that a tape recording would be made of the interview. It was my understanding that a transcript of the tape would be made available. I have not received a transcript, although I have received a synopsis of the interview.

During the interview, I provided background information on the Committee's formation, followed by specific responses to questions posed by Ms. Moyano Yob. I discussed the problems in moving legislation throughout the Florida Legislature, and the reasons for advancing the four constitutional amendments. I was asked the reasoning behind each of the amendments, and responded in kind. It should be noted that the synopsis provided by the Commission of this interview does contain various errors, and utilizes certain phraseology which I do not believe is consistent with the language I used.

At the conclusion of the interview, Ms. Moyano Yob indicated that I would probably "be called" as a witness at the mid-September hearings. I do not recall my precise response, but I believe that I indicated that I would be most appreciative if my taped transcript might be used as a substitute for live testimony. I was not unwilling to testify, although, in similar fashion to JoAnn Peart's reticence, I did not believe that my testimony would be of great use to the Commission.

On the morning of Saturday, September 2, 1995, a U.S. Marshal came to the door at my home, and served me with a subpoena from the U.S. Commission on Civil Rights. While I was not surprised to receive a subpoena *ad testificandum*, the annexed *duces tecum*, containing seven separate categories of requested documents, was truly one of the most amazing items I have ever reviewed. In essence, the Commission was asking the FLA-187 Committee to produce every single shred of paper which reflected the mental processes of various activists in composing the amendments, the legal and factual basis for each of the amendments, and all internal documentation which might in any way relate to the group's political activities. Within 48 hours, I had confirmed that Mr. Schera and Mrs. Peart had received similar requests relating to their organizations, and I began legal research and consultation with other attorneys in formulating an appropriate response. Legal action to enjoin the enforcement of the subpoenas was contemplated, with Washington or the Southern District of Florida as the venue for the action.

Mr. Schera, an elderly gentleman with a history of open-heart surgery within the past few years, was now very nervous about the subpoena which he had received. It requested that he provide documentation going back as far as 1980. Mrs. Peart was a nervous wreck, unable to sleep or eat properly, and given to periods of extreme distress over this episode.

During the week of September 4, 1995, the subpoenas with annexed duces tecum, were forwarded to various congressional representatives, including Congressman Mark Foley, in hope that the Commission's actions and motives might be explored.

On September 8, 1995, it was announced that the Constitution Subcommittee would be holding the subject hearing, to look into the Commission's activities.

Various newspaper articles appeared throughout Florida criticizing the Commission's actions, and the Washington Times provided coverage. During the weekend of September 9 and 10, 1995, I was in Washington, making final preparations for the commencement of litigation against the Commission. On Monday, September 11, 1995, the Commission forwarded correspondence to Mr. Schera, Mrs. Peart, and the undersigned, indicating that the Commission would not seek to enforce the subpoenas.

The fallout from the Commission's actions have been quite noticeable, and particularly distressing since it was endangered by acts committed by a Federal agency committed to the preservation of civil rights. Several potential volunteers have mentioned the subpoena activity as a reason for reconsidering their involvement in this campaign. All of our current volunteers are fully cognizant of the threats of physical violence, the death threats and the actual vandalism endured by volunteers in California's proposition 187 movement in 1994; they are fearful that their names may be publicized, and the negative impact of the Civil Rights Commission's actions will probably be felt for some time.

Perhaps the most distressing of all the Commission's demands was the request for internal memoranda, which would have reflected the identity of those in attendance at various meetings, and would have exposed them to a level of public notoriety that they had never anticipated.

I am hopeful that the Committee will take whatever steps are necessary to ensure that the U.S. Commission on Civil Rights' subpoena powers are never again utilized to cast a chill upon the lawful exercise by American citizens of their right to seek redress of their government through petition, even if that requires the removal of the Commission's subpoena powers or the dissolution of the Commission in toto.

Mr. CANADY. Thank you, Mr. Ross. I don't have any questions.
Mr. WATT.

Mr. WATT. I don't have any questions. Let me do ask one question about proposition 187.

You indicated that you understood that the Civil Rights Commission is nonpartisan. Is proposition 187 a partisan issue?

Mr. ROSS. Insofar as it is political activity, of course, it's partisan.

Mr. WATT. No, I mean, but is it Democratic; is it Republican?

Mr. ROSS. No. We have as—now what the 187 Committee serves as—

Mr. WATT. I just wanted to make sure you—but there are Democrats and Republicans—

Mr. ROSS. Sure.

Mr. WATT [continuing]. That support and oppose proposition 187?

Mr. ROSS. Oh, absolutely.

Mr. WATT. OK. OK, I don't have any questions.

Mr. CANADY. Thank you, Mr. Watt. Mr. Goodlatte.

Mr. GOODLATTE. I take it, then, that you did not go and testify at all, or did you?

Mr. ROSS. No.

Mr. GOODLATTE. Right. I'm sorry you've been put through that process, and I don't have any questions, Mr. Chairman.

Mr. CANADY. Thank you, Mr. Goodlatte.

Mr. Ross, we do appreciate your taking the time to be with us today. We appreciate your testimony and appreciate your bringing this matter to our attention. Thank you.

Mr. ROSS. Thank you.

Mr. CANADY. The subcommittee is adjourned.

[Whereupon, the subcommittee adjourned.]

APPENDIX

U.S. CIVIL RIGHTS COMMISSION QUESTIONNAIRE

REQUESTS FOR DOCUMENTS

1. Please produce complete copies of your organization's publicly available Form 990 tax forms for the past two years.
2. Please produce a copy of the founding documents and/or charter for your organization that sets forward its founding or guiding principles.
3. Please produce a copy of your organization's annual report for the past two years.
4. Please produce all independent audits conducted of your organization in the past two years.

GENERAL BACKGROUND QUESTIONS

1. What is the tax status of your organization under Internal Revenue Code (IRC) section 501(c)?
2. If your organization is a section 501(c)(3) tax-exempt organization, has it made the 501(h) election for purposes of political advocacy? If not, why not?
3. Identify each organization affiliated with your organization (by stating the affiliate's name, tax-status, tax identification number, place of incorporation, principal business address, telephone and facsimile number). For each affiliate that is a section 501(c)(3) tax-exempt organization, state whether it has made the 501(h) election for purposes of political advocacy. If not, explain why not.
4. Identify all transfers of monetary or non-monetary assets from your organization to any affiliated organizations, and from any affiliated organizations to your organization for the past 12 months.
5. How much federal taxes would your organization have owed last year had your organization not been tax-exempt? In the past 5 years? During the existence of your organization?
6. In addition to the tax windfall enjoyed by your organization, identify all other benefits your organization gains from its tax-exempt status, including mail postage rate discounts (by describing the benefit and estimating the annual value of this benefit).
7. What is your understanding of the justification for your organization's tax-exempt status?
8. Does your organization believe that the current IRC limitations on the amount of non-Federal funds that can be spent by tax-exempt organizations on political advocacy, lobbying, and electioneering violate the First Amendment, or are otherwise unconstitutional? If so, please identify the limitations that are unconstitutional and explain the basis for your organization's belief. It is your organization's belief that any of the limitations contained in the attached legislation violate the First Amendment or are otherwise unconstitutional? If so, please identify the limitations, explain the basis for your organization's belief, and distinguish this belief from its belief on the constitutionality of the current IRC limitations.
9. Does your organization engage in any non-tax-exempt business activities? If so, please describe those activities, and estimate the amount of revenue earned from those activities?
10. In the past five years, has your organization endorsed any products, goods or services? If so, identify the endorsements, and state the amount of any compensation your organization received for these endorsements.
11. How would your organization spend an extra \$1,000 this year? \$100,000? \$1,000,000?

12. For each of the past five years: state your organization's expenditures on salaries (including wages, bonuses, expense accounts and all other forms of compensation); itemize the salaries (including wages, bonuses, expense accounts and all other forms of compensation) paid to your top five officers and directors for the past five years.

13. What percentage of your organization's annual revenues are spent on fundraising?

14. If your organization is a coalition or association of organizations, please identify the member organizations by stating their full names, tax status, principal business address, telephone and facsimile numbers, and chief executive officer, and please state the amount of annual dues or membership fees paid to your organization by each member organization.

POLITICAL ADVOCACY INFORMATION

1. In the past five years, has your organization engaged in political advocacy as defined in the attached legislation? If so, please provide a brief description of the type of political advocacy engaged in, and a good faith estimate of the expenditures on each activity. Please answer for each affiliated organization.

2. Does your organization devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, as that term is used in the Internal Revenue Code? What safeguards has your organization created, if any, to ensure that this limitation is not exceeded?

3. What percentage of your non-federal budget do you spend on political advocacy (as defined in the attached legislation), and what is the total amount?

4. Does your organization directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office? If so, please describe your organization's activities.

5. Does your organization disclose its political advocacy activities to its donors and potential donors? If so, please produce copies of all documents containing such disclosures. If not, please explain why not. Also, please produce copies of all promotional and fundraising materials distributed to potential donors.

GRANT INFORMATION

1. Has your organization received any federal grant funds since 1990? If so, please itemize for each grant received: the grant identification number; the amount or value of the grant (including all administrative and overhead costs awarded); a brief description of the purpose or purposes for which the grant was awarded; the identity of each Federal, State, local and tribal government entity awarding or administering the grant, and program thereunder; the name and tax identification number of each individual, entity or organization to whom your organization made a grant. Please answer this question with respect to each affiliate organization.

2. Does your organization receive donations, membership fees or dues from any other organizations that receive federal grant funds? If so, please identify the organizations and the amount(s) each of them have transferred to your organizations for the past two years. Were these organizations' contributions made possible by their receipt of federal grant funds? If not, how do you know? If so, justify your organization's decision to accept these contributions.

3. How does your organization separate federal grant funds from its non-federal funding? Is this record-keeping available to the public for inspection? Will you please make it available to the subcommittee for our review?

QUESTIONS REGARDING ABILITY TO COMPLY WITH THE PROPOSED LEGISLATION

1. Does your organization maintain accounting books and records relating to its activities? Are these books and records based on Generally Accepted Accounting Principles (GAAP)? If not, why are they not based on GAAP?

2. Does your organization allocate, disburse, or contribute any monetary or in-kind support to any individual, entity, or organization whose expenditures for political advocacy in any of the past five years exceeded 15 percent of its total expenditures for that year? 25%? 50%? 75%? 95%? For each of these thresholds, please identify each individual, entity or organization receiving the support, and the amount of support provided. If you are unable to answer this question for any of these thresholds, please explain why you are unable to answer.

3. Does your organization make available the results of nonpartisan analysis, study, research, or debate? If so, please identify the types of work made available by your organization in the past year.

4. Does your organization provide technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision? If so, please identify the type of technical advice or assistance provided and the governmental body receiving it.

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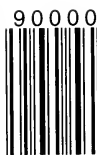


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